

**IN THE HIGH COURT OF KERALA AT
ERNAKULAM**

Present:

**The Honourable Mr. Justice U.L. Bhat
&**

The Honourable Mr. Justice K.P. Balanarayana Marar

A.S. No. 331 of 1980

&

Cross Objections

Appellant:

Moran Mar Baselius Marthoma Mathews I

v.

Respondents:

Most Rev. Poulse Mar Athanasios & Others

(Supplement to 1990 (2) K.L.T.)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

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The Honourable Mr. Justice U.L. Bhat

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The Honourable Mr. Justice K.P. Balanarayana Marar

Friday, the 1st day of June, 1990 / 11th Jyaistha, 1912.

A.S. No. 331 of 1980 & Cross-objections

(This is a common judgment pertaining to A.S. Nos. 331/80, 350/80, 354/80, 358/80, 359/80 and 362/80 and Cross-objections in A.S. Nos. 331/80, 350/80, 354/80, 358/80 and 362/80)

(Against the judgment and decree in O.S.No. 4 of 1979 of the single Judge of this court)

Appellant – 2nd Plaintiff:

Moran Mar Baselius Marthoma Mathews I, Catholicos of the East-cum-Malankara Metropolitan, Devalokam, Catholicate Aramana, Muttambalam, Kottayam-4.

By Advocates:

M/s. F.S. Nariman, G.V. Pai, M. Abraham, K. George, C.T. Joseph, C.K. Koshy and John Mathai

Respondents: Defendants 1 to 11, 14, 15, 17 to 19

1. Most. Rev. Poulouse Mar Athanasios, Metropolitan residing at the building of the Evangelistic Association, Via. East Iringol Kara, Perumbavoor village, Kunnathunadu Taluk
2. Most. Rev. Thomas Mar Dionysious, Metropolitan, residing at Valiapally Church, Kothamangalam
3. Most. Rev. Geevarghese Mar Gregorios, Metropolitan, residing at St. George Orthodox Church, Perumpally Kara, Mulanthuruthi Village, Kanayannur Taluk
4. Rev. Fr. A.V. Zacharia, S/o. Varghese, residing at Aruparachirayil, Thiruvarpu Village, Kottayam
5. Rev. Fr. K.C. Anthrayose, S/o. Chacko, residing at Kodumpoor from Kollamparambil, East Pampady, Pampady Village, Kottayam
6. Rev. Fr. Roy Paul, S/o. Poulouse Kathanar, residing at Vettikattil, Neduva Desom, Edakkattuvayal Village, Kanayannur Taluk
7. Rev. Fr. P.P. Thomas, S/o. Poulouse, Paruthavayalil, Keezhillam Kara, Rayamangalam Village, Kannathunadu
8. Kuriakose Deacon (now Priest), S/o. Mathai, residing at Kodimatathil, Edakkattuvayal desom, Kanayannur Taluk
9. M.A. Kuriakose Deacon, S/o. Anthrayose, residing at Moolayil House, Vazhappally Village, Cheeranchira P.O. Changanacherry
10. Alex Thomas Deacon, S/o. Thomas, residing at Kunnumpurathu, Pampady Village, Kottayam
11. Rev. Fr. Abraham Mattamana, St. George Jacobite Syrian Church, Mananthavady
12. Rev. Fr. Alexander Muranhookil, Chittalakattu S/o. Varkey, Mulakulam Thekkekara, Mulakulam Village, Vaikom
13. Rev. Fr. Punnoose, Vaithra, S/o. Ipe, Kumarakom Village, Kottayam

14. Very Rev. Jacob Kuriakal, Korepiscopa, S/o. Abraham, Mazhukeer Kara, Thiruvanmandoor Village, Chengannur now residing at Banatwala Building, 1st Dhobitalo Lane, Kalbadevi P.O., Bombay - 2.
15. The Evangelistic Association of the East, Head Office At Perumbavoor, represented by its General Secretary Rev. Fr. Geevarghse Athinkal, Vengoor Village, Puzhukkadu Kara
16. Malankara Suriyani Knanaya Samudayam, represented by its Trustees Fr. K.I. Abraham, Kizhakkemuriyil, Pachavangady - P.O., Ranni and T.O., Kuruvilla Thomas Papalil, Nattakam, Kottayam

R1,R2,R4,R7,R9,R10,R13 and R15 by Advocates:

M/s. M.C. Bhandare (Senior Advocate), P.J. Philip, P.N. Achan and Ranji Thomas

R3 by Advocates: *M/s. S. Padmanabhan (Senior Advocate) and E.V. Abraham*

R12 by Advocate: *Mr. M. Bobby*

R16 by Advocates: *M/s. T.C. Mohandas and P.N. Ramakrishnan Nair*

The above appeal having been finally heard on 9-2-1990 the court on 1-6-1990 delivered the following:

U.L BHAT & K.P. BALANARAYANA MARAR, JJ.

A.S. Nos. 331/80, 350/80, 354/80, 358/80, 359/80, 362/80 and
Cross Objections in A.S. Nos. 331/80, 350/80, 354/80, 358/80 and 362/80

JUDGMENT

Bhat, J.

These appeals and Cross-objections arise out of the common judgment and decrees passed by Justice T. Chandrasekhara Menon, a learned single Judge of this court who disposed of eight suits which had been originally instituted in various courts in the State and subsequently transferred to the First Additional District Court, Emakulam and later as per orders of the Supreme Court in Civil Appeal No.2222 of 1979, tried by the learned single Judge. All the suits were dismissed directing the parties to bear costs.

2. These suits arise out of the differences and disputes within the Malankara Orthodox (or Jacobite) Syrian Church (for short the 'Malankara Church'). The Church and the Orthodox Syrian community have been riven with differences and disputes for over a century. The church and the community were involved in litigations in several fora, the last of which ended with the decision of the Supreme Court reported in AIR 1959 S.C. 31. It was expected that with that decision a united church would emerge and peace would reign in the community. For a decade and half the two warring groups moved along the path of reconciliation and again differences arose and this led to an explosion of litigation. A large number of suits were filed in various courts in Kerala and a few even outside Kerala. An additional District Court was established with headquarters at Emakulam and all the suits in Kerala were transferred to that court. The court took up several suits for trial. When evidence was over in these eight suits, the Supreme Court directed that these suits be disposed of by a single Judge of the High Court.

3. In these cases as well as in some of the previous litigations, parties were ranged in two broad groups which can be loosely described as Patriarch group and Catholicos group. Both the groups are dis-satisfied with the common judgment under appeal and that has led to these appeals as well as Cross-Objections in five of the appeals.

History of the Church and historical background of the litigation:-

4. The following narration is spelled out from judicial decisions in the earlier legal battles. There is a traditional belief that St. Thomas, one of the twelve Apostles

of Jesus Christ, founded the Malankara Church. It is believed that St. Thomas visited India in AD 51-52 and arrived at Cranganore and established seven churches in the Malayalam speaking parts of South India. That is how the church derived the name Malankara Jacobite (or Orthodox) Syrian Church, "Malankara" meaning "Malayalam speaking". St. Thomas preached Christianity and made many converts. In AD 325 the first general council known as Synod or Council of Nicea was held, with priests and prelates representing all dioceses in the Christian world attending and Christians from India being represented by Johannes, Metropolitan of Persia and India. The Council, inter alia, settled the jurisdiction of various ecclesiastical heads who were charged with the task of carrying out the decisions of the Council. The Council recognised four Patriarchs, namely, those of Rome, Constantinople, Alexandria and Antioch, respective Patriarchs being given supreme authority and jurisdiction over their respective Sees. The title and dignity of Patriarch was extended to the Bishop of Jerusalem. The Great Metropolitan of the East was made the Catholicos of the East. The Patriarch of Antioch was to have jurisdiction over the east, meaning eastern part of the Roman Empire. Malankara to which foreign episcopa were a rarity welcomed all episcopa who came from outside. Episcopa came from under Antioch supremacy or from Babylon under Nestorian Patriarch. In AD 341 Thomas of Cana visited Cranganore. He returned to Baghdad and came back in AD 345 with a group of 400 Syrian Christians, a few deacons and Joseph Episcopa of Uraha under the direction of the Patriarch of Antioch and devoted himself to preaching Christianity and establishment of churches. It appears this group formed the nucleus of what is presently known as Knanaya community among the Orthodox Syrians. In AD 825 two Episcopa under the command of the Nestorian Patriarch of Babylon arrived in Malankara and they were much respected. Their efforts resulted in Nestorian creed intermingling with that of Malankara Church. There was succession of Metropolitans from foreign parts who ruled over the Malankara Church. These Episcopa were either under the Antiochan supremacy or Nestorian supremacy.

5. During the period AD 1500 to 1654 the community came under the influence of the Portuguese. Portuguese who were adherents of Roman Catholic faith persecuted and attempted to bring the Syrian Christians under Papal supremacy. The culmination of persecution was reached in 1599 in the Synod of Diamper (Udayamperoor) called by the Portuguese Archbishop in which all religious books of the Orthodox Syrian Church were burnt as heretical. In spite of the efforts of the Portuguese, an Arch-deacon by name Thoma was consecrated Metropolitan by the Patriarch Mar Ignatius. The Syrian Christians assembled at Mattancherry in 1654 and dramatically took an oath to stand by their Orthodox beliefs, the oath being known as the Oath of Koonan Cross. The community often tried to establish contact with Patriarch of Antioch and on and off Bishops came from Persia till about AD 1800. Between AD 1800 and 1842 local Metropolitans ordained their successors, the last of them being Mar Cheppat Dionysious. In AD 1840 one Mar Mathews Athanasius went to Syria and got himself ordained as Malankara Metropolitan (there was only one

Metropolitan in Malankara then) by the Patriarch of Antioch. Meanwhile, in 1808 Moran Mar Thoma VI, known as Dionysius the Great by investing 3000 Star Pagodas in the British Treasury at Trivandrum on interest at 8% per annum in perpetuity created a trust for charitable purposes. He was succeeded by Mar Thoma VII and the latter by Mar Thoma VIII, not consecrated by the Patriarch of Antioch or his delegate and for that reason not fully accepted by the local community.

6. Meanwhile disputes arose between the Orthodox Syrians and such of them who had gone over to the Roman Catholic faith during the Portuguese days. Mar Thoma VIII was followed by Mar Thoma IX who was forcibly divested of his office by Ittoop Ramban, newly styled as Dionysius on the authority of Philixinos. On his death, Philixinos consecrated one Geevarghese Kathanar as Mar Dionysius Metropolitan. During the period he held office, there was an intermingling of the Malankara Church and the Missionaries of the England-based Church Mission Society. The British Resident supported Mar Dionysius. He had not appointed a successor and the local people selected Philipose Malpan, already consecrated by Philixinos as Malankara Metropolitan. He was supported by the Travancore State. He, who was known as Cheppat Dionysius was supported by the Travancore Ruler.

7. The union between the C.M.S. and the Syrian Christian community pressed on by the former did not fructify. This resulted in the Cochin Award of AD 1840 leading to division of properties among the two groups. The investment of 3000 Star Pagodas was one of the assets allotted to the Malankara Church by the Award which prescribed that interest should be paid to the Malankara Metropolitan jointly with two other trustees, namely Kathanar trustee and lay trustee to be selected by the community. Mar Dionysius was not fully accepted as their spiritual head by the community on the ground that they had not been properly consecrated. Meanwhile, Mar Athanasius went to Antioch and the Patriarch consecrated him Metropolitan. There ensued a long controversy between the two rival claimants Mar Dionysius of Cheppatt and Mar Athanasius, the former being supported by the Travancore Royal House. Meanwhile Mar Kurilos, a delegate of the Patriarch who came here to settle the disputes fraudlently attempted to take over as Metropolitan. A Commission known as Quilon Committee appointed by the Travancore Government concluded in 1852 that Mar Athanasius should be recognised and proclaimed by the Government as Metropolitan of the Malankara Church. His administration continued till 1866.

8. Meanwhile, a member of the Malankara community who went to Antioch was consecrated and appointed Metropolitan by the Patriarch who excommunicated Mar Athanasius. He was known as Mar Joseph Dionysius. The Travancore Government refused to recognise him and indicated recourse to court as a possible solution. Ultimately, the Travancore Government revoked the previous proclamation. Meanwhile, Mar Athanasius consecrated his cousin Thomas Athanasius as successor and left a Will in his favour and died in 1877. In AD 1876, the Patriarch Peter III accompanied

by his Metropolitan Abdulla arrived in India. He convened a Synod known as Mulunthurthu Synod and proclaimed Dionysius as lawful Malankara Metropolitan. The meeting gave birth to Malankara Syrian Association (popularly known as Malankara Association) to manage the affairs of the church and the community. The aftermath of the Synod was the withdrawal by the Travancore Government of the earlier proclamation recognising Mar Athanasius.

9. In 1877 Mar Mathews Athanasius who had defied Patriarchal authority died after ordaining his brother Mar Thomas Athanasius as his successor and the latter took charge. Seven diocesses were created. In 1879 Mar Joseph Dionysius claiming to be the properly ordained Malankara Metropolitan filed Suit OS 439 of 1054 in the Zilla Court of Alleppey against Mar Thomas Athanasius and his two co-trustees for recovery of trust property and incidental reliefs. The case was ultimately disposed of by the Travancore Royal Court of Final Appeal in 1899. The court held that See of Antioch had ecclesiastical or spiritual supremacy over the Malankara Church, that the supremacy was to be exercised by consecrating Metropolitans, sending Morone (Holy Oil) to be used in churches in Malankara for baptismal and other purposes and in general supervision over the spirigual government of the church, but the supremacy never extended to government of temporalities of Malankara Church. The court also held that Malankara Metropolitan should be a native of Malabar consecrated by the Patriarch or by his duly authorised delegate and accepted by the local community as their Metropolitan to entitle him to spitirual and temporal government of the local church. The court upheld the claim of Mar Dionysius Metropolitan consecrated by the Patriarch and accepted by the community. The decree for recovery was confirmed. The judgment of the Royal court is Ext.B74. It appears, Mar Thomas Athanasius after losing the legal battle left the church with his followers and formed what is known as Mar Thoma Church. Mar Joseph Dionysius with his co-trustees managed the affairs till his death in AD 1909. Two more Metropolitans, Mar Geevarghese and Mar Paulose were selected by the Association and ordained by the then Patriarch of Antioch, Abdulla II.

10. The above decision led to further litigation in various courts, one of them being OS 56/1069 of the Trichur Zillah Court filed by Mar Dionysius putting forward his claim as Metropolitan in regard to churches of Arthat and other churches in Cochin State and claiming spiritual and temporal jurisdiction. Defendants were followers of Mar Thomas Athanasius. The Court of Appeal of Rajah of Cochin by Ext.B110 judgment upheld his claim. We notice that the parties in the present litigation accept judgments in Ext.B74 and B110 as binding on the community.

11. We now notice the background of the decision reported in 45 TLR 116 of the Travancore High Court in what is known as the Vattippanam or Interpleader suit. Abdul Messiah, Patriarch of Antioch lost the support of the Turkish Government which withdrew its earlier firman in his favour. It is not known if he was removed

synodically. Abdulla II was duly elected as Patriarch of Antioch. In about 1909 Geevarghese Dionysius was elected by the Association to succeed Mar Joseph Dionysius as Malankara Metropolitan. In the same year Abdulla II came down to Malankara, dissatisfied with Royal Court judgment and evidently with a view to regain temporal authority over Malankara Church. He attempted to obtain from the parish churches and individuals acknowledgements of Patriarch's temporal powers and this was resisted, though he obtained such documents from a few churches. Abdulla II excommunicated Mar Geevarghese Dionysius and ordained Mar Kurilose as Malankara Metropolitan. Malankara Association declared the excommunication invalid and removed the trustees inducted alongwith the appointment of Mar Kurilose and elected two new trustees. In 1912, Abdulla II left and Abdul Messiah, came to Malankara. He declared the excommunication of Mar Geevarghese Dionysius invalid. He established a Catholicate in Malankara and installed Mar Evanios, a senior Metropolitan as Catholicos with power to ordain Metropolitans, consecrate Morone and authorised the Metropolitans to instal Catholicos in future. Once again there were two sets of rival Metropolitans and trustees. Naturally, the rivals put forward claims to the interest due on account of the endowment of 3000 Star Pagodas which led to what is known as the Vattippanam or Interpleader suit.

12. The Secretary of State for India instituted interpleader suit, OS 94/1088 in the District Court, Trivandrum depositing arrears of interest due by the government and impleading rival sets of claimants under S.449 of the Travancore Code of Civil Procedure. The suit was, with permission of the court, converted into representative action on behalf of Jacobite Syrian Christian community and notice was given by public advertisement under S.26 of the Code. Several persons got themselves impleaded as additional defendants. The Secretary of State was discharged from liability. Mar Geevarghese Dionysius and his co-trustees, defendants 1 to 3 were treated as plaintiffs. Mar Kurilos and his co-trustees were defendants 4 to 6. On the death of fourth defendant, Mar Paulose Athanasius claiming to be his successor was impleaded as 42nd defendant. The District Court found as follows: Patriarch of Antioch had only the right of spiritual supervision over the Malankara Church and had no right to interfere with temporal administration. Abdulla II had tried to secure temporal authority by taking documents from congregations and from ecclesiastics of the church which he had no right to do: First defendant's refusal to acknowledge such temporal authority led to his excommunication. Grounds mentioned in the Bull of excommunication were not true or sufficient. Patriarch cannot and only Synod could excommunicate Metropolitans and the excommunication was in violation of the principles of natural justice. Bull was opposed to the Constitution of the church as laid down in the Mulunthuruthy Synod resolution. First defendant had not become unfit to be Metropolitan. He had not accepted Abdul Messiah as the ecclesiastical head of the church nor denied the authority of Abdulla II. Turkish Government had withdrawn the firman issued to Abdul Messiah who had thereafter been prevented from exercising his jurisdiction as Patriarch but was not prevented

from exercising purely spiritual functions which he did when he came here in 1912. Defendants 1 to 3 had not become aliens to the church. First defendant continued to be the lawful Metropolitan. Among the two rival versions of Hudaya compiled by one Mar Hebraeous, Ext.A and not Ext.18 was the true version. Accordingly decree was granted in favour of the first defendant and his co-trustees.

13. Appeal preferred by defendants 5,6 and 42 was disposed of by a Full Bench of Travancore High Court setting aside the judgment of the District Court and granting decree in favour of defendants 5 and 6 and the person to be elected and consecrated as Malankara Metropolitan. The High Court accepted Ext.18 as the true version of canons and further held as follows: Patriarch had power to ordain and excommunicate Metropolitans by himself and without the intervention of Synod but after observing principles of natural justice which were observed in this case and, therefore, excommunication was valid. First Defendant had thereby lost his position as Malankara Metropolitan. It was unnecessary to decide if he had become alien to Jacobite faith by his conduct during the visit of Abdul Messiah. Removal of defendants 5 and 6 was invalid since they had been removed at a meeting of the Malankara Association convened and presided over by an excommunicated Metropolitan. Therefore, appointment of defendants 2 and 3 as co-trustees was invalid. 42nd defendant had not proved his appointment as Metropolitan and, therefore, could not step into the shoes of the first defendant. This decision is reported in XLI TLR 1. Defendants 1 to 3 thereupon filed review petition and the court ordered re-hearing of the appeal subject to the condition that the findings of the Full Bench on the authenticity of Ext.18, as to the power of Patriarch to excommunicate Metropolitan without Synodical intervention and as to the absence of an indirect motive on the part of Patriarch in exercising the power of excommunication must be taken as binding. There was another petition filed in which the court held that if any of the findings is found to be so logically connected with the question relating to natural justice that the latter cannot be properly dealt with without considering such findings, then for this purpose alone the excluded questions may be reconsidered. The Full Bench which re-heard the appeal dismissed the appeal on the following findings: It was admitted by both sides that administration of the temporalities of Syrian Jacobite church vested with the local Malankara Metropolitan and other Metropolitans. Defendants had not proved that Patriarch conducted any enquiry into the conduct of first defendant. Patriarch did not observe principles of natural justice before excommunicating first defendant and, therefore, excommunication was invalid. First defendant remained Metropolitan. Meeting of the association removing defendants 5 and 6 was validly convened by him. Abdul Messiah was admittedly at one time Patriarch of Antioch and he ceased to act as such later and Abdulla II was ordained in his place. It was conceded that firman issued to Abdul Messiah by the Turkish government was withdrawn and the withdrawal itself had no effect on the exercise by the Patriarch of purely spiritual functions. According to Canons if there are two Patriarchs, first shall minister and the other shall sit idle. it cannot be said that Abdul Messiah had no claim

to be regarded as Patriarch. There could be two Patriarchs at the same time though one should sit idle. What is the consequence if he does not sit idle is not stated in the Canons. It cannot be said that defendants 1 to 3 started a new church or first defendant become heretic and had gone out of the church. Ordination of first defendant as Metropolitan was valid. He did not forfeit his position by heresy or schism. Removal of defendants 5 and 6 was lawful. Election of defendants 2 and 3 was not shown to be illegal. Therefore, defendants 1 to 3 were the trustees of the plaintiff trust and were entitled to receive interest. This judgment is reported in XLV TLR 116.

14. Mar Julious Elias, Patriarch's delegate issued an order calling upon Mar Geevarghese Dionysius to execute an Udampady and suspending him for having committed grave offences against the Holy Throne of Antioch. A suit, OS 2/1104 was filed in the Kottayam District Court against Mar Geevarghese Dionysius and other persons including Mar Philexinos, the then Catholicos, on whose death, Moran Mar Baselio's, succeeding Catholicos was impleaded. The suit was dismissed for default. Restoration petition was rejected and appeal against the rejection was also dismissed. In 1933 Empraim was elected Patriarch without co-operation of Malankara Church. Hence he was not recognised by Malankara Metropolitan. Meanwhile in 1928 Managing Committee of Malankara Association had been authorised to draw up a constitution. Draft constitution was drawn up. Mar Geevarghese Dionysius died on 3-2-1934. A meeting of the Malankara Association was convened on 26-12-1934 at the M.D. Seminary, Kottayam issuing notice to all the parishes requiring them to send three representatives each to the meeting and circulating agenda showing that a Constitution was to be enacted for the Association and Malankara Metropolitan and two co-trustees were to be elected. At the meeting, Constitution Ext.A9 was passed and Moran Mar Basselious elected as Malankara Metropolitan and Catholicos. In 1935 a rival meeting of the Association was held at Karingasseri by the Patriarch group and Mar Poulouse Athanasius was elected Malankara Metropolitan and two co-trustees were elected. Patriarch confirmed the election of Mar Poulouse Athanasius. The groupism led to fresh litigation, OS 111/1113 known as Samudayam Suit.

15. OS 111/1113 was filed in the District Court, Kottayam by Mar Poulouse Athanasius and his co-trustees (of the Patriarch group) against Moran Mar Basselious (Malankara Metropolitan of the Catholicos group) and his two co-trustees. Plaintiffs claimed declaration that first plaintiff was the lawful Malankara Metropolitan and other plaintiffs were the lawful co-trustees entitled to administer suit properties, namely, common properties of the Malankara Church and that defendants 1 to 3 were pretenders and trespassers and in wrongful possession and to compel them to render accounts and surrender possession and for injunction restraining the first defendant from doing any act as Catholicos or Malankara Metropolitan and defendants 2 and 3 from acting as co-trustees. The sum and substance of the plaintiffs' contentions was that first defendant had not been ordained or recognised by Patriarch, that his acts were against the tenets and the faith of the church and he had

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rendered himself alien to the church and defendants and their group had voluntarily separated themselves by forming a new church. Defendants resisted the claim. It has to be noticed that first plaintiff was none other than the 42nd defendant in the Interpleader case. The District Court in 1943 dismissed the suit by Ext.A16 judgment and holding, inter alia, that Ext.A26 Canons (Ext.A of earlier suit) was the correct version. There was an appeal AS 1/1119 in the Travancore High Court. In 1946, High Court allowed the appeal and decreed the suit, holding, inter alia, the version of Canons in Ext.BP (Ext.18 in earlier suit) was the correct version. A review petition filed by the unsuccessful party was dismissed. In AIR 1954 SC 526, the Supreme Court allowed the review petition and directed re-hearing of the appeal. The High Court of Kerala heard the appeal allowed the appeal and decreed the suit. This decision is reported in 1957.KLT 63. In appeal, the Supreme Court allowed the appeal filed against the High Court decision and restored the decree of the trial court dismissing the suit. The decision of the Supreme Court is reported in AIR 1959 SC 31.

Aftermath of Supreme Court Judgement:-

16. In the wake of the decision of the Supreme Court, attempts were made to establish peace and unity in the church. As per Ext.A19 Kalpana dated 9-12-1958, the Patriarch Yacob III accepted the Catholicos cum Malankara Metropolitan of the Catholicos group. By Ext.A20 Kalpana the latter accepted the Patriarch subject to the provisions of the Constitution Ext.A1. These documents were exchanged at about mid-night of 16-12-1958. During the pendency of Samudayam Suit, Patriarch had consecrated a rival Catholicos cum Malankara Metropolitan and a few rival Metropolitan without reference to the other group. The mutual acceptance referred to above and the desire for a unified church necessitated restructuring of dioceses. Dioceses were re-allotted recognising all the Metropolitan of both the groups and a few Metropolitan of the Patriarch groups were put in charge of dioceses. The Metropolitan of both group were admitted in the Synod and the Managing Committee of the Malankara Association. Ext.A20 Kalpana of the Catholicos elicited a reply Ext.A23 after the passage of about four months from the patriarch, raising objection to the reference to Constitution in Ext.A20 and questioning the propriety of Catholicos using the title Holiness and mention of the throne of St.Thomas and designation as Catholicos of the East and also the allocation of dioceses etc. Intermittent correspondences followed. In 1964 Mar Basselious Geevarghese, Catholicos and Malankara Metropolitan (of the Catholicos group) passed away and his elected successor Ougen I was installed under the presidentship of the Patriarch and this Catholicos and Malankara Metropolitan was the first plaintiff in O.S.4/79. The Constitution of the Association was amended in 1967 by the Managing Committee. In 1970, Mathew Athanasius, the second plaintiff in OS 4/79 was elected successor to the office of the Catholicos and Malankara Metropolitan. He took the name Basselious Mar Thomas Mathews I. This election was challenged in OS 3/79. The suit was dismissed and the decree has not been appealed against. In 1972-73, the Patriarch deputed a delegate

to the Malankara Church and this was opposed by the Catholicos-cum-Malankara Metropolitan and the Managing Committee. The delegate ordained priests. He had to return because of non-extension of his Visa. Subsequently, the Patriarch consecrated defendants 1 to 3 in OS 4/79 as Metropolitans and they in turn ordained priests. This was followed by installation by the Patriarch of Mar Poulouse Phylixinos as rival Catholicos in the name of Mar Basselious Poulouse II. On the death of then Patriarch, his successor Ignatius Zaka I was installed allegedly without the co-operation of the Catholicos-cum-Malankara Metropolitan. Thus again group rivalries intensified leading practically to a vertical split in the church on the lines of the split prior to the Supreme Court decision. This led to each group trying to outreach the other by attempting to obtain control of parish churches, and suits began to be filed by members of one or the other group. An additional District Court was established at Ernakulam and all these suits were transferred to that court. District Court disposed of some suits and the decrees are challenged before us in a batch of appeals. Pending trial of a batch of eight suits, as per directions of the Supreme Court, they were transferred to the High Court and ultimately disposed of by a common Judgment, by T.Chandrasekhara Menon, J. This judgment is challenged in this batch of appeals. We have also recalled and heard an appeal against decree of District Court in another suit transferred from Sub Court, Calicut. A second appeal pending before High Court of Madras arising out of a suit in a civil court at Nilgiris has been transferred to this court and heard by us.

17. No appeal has been preferred against the dismissal of OS 3/79. The decree in OS 7/79 was challenged in AS 357/80. The appeal against the decree abated on the death of the respondent. The other decrees are challenged in this batch of appeals. Cross-objections have been filed in some of the appeals.

18. We have heard elaborate arguments advanced by learned counsel appearing for all the parties in this batch of appeals. In consultation with learned counsel, we have formulated the points arising for consideration as follows:

- (1) Whether Ext.A90 or Ext.B161 is the correct version of Hudaya Canons accepted by the Malankara Orthodox (Jacobite) Syrian Community as valid and binding?
- (2) Are the plaintiffs barred by res judicata from contending that the binding version of Hudaya Canon is Ext.A90 by reason of the judgment in 41 T.L.R. 1, Order in the Review Petition and the judgment in 45 T.L.R. 116?
- (3) Are the defendants barred by res judicata from contending that the binding version of Hudaya Canon is not Ext.B 161 by reason of the decision in the Samudayam suit?

(4) Whether the Catholicate established under Ext.A14 by Patriarch Abdul Messiah with powers as provided for in Ext.A14 is valid and binding on the entire Malankara church?

(5) Whether by such establishment of the Catholicate the Patriarch was deprived of his powers to ordain Metropolitans, consecrate/send anyone or to exercise any other spiritual power over the Malankara church thereby reducing his powers to a vanishing point?

(6) Whether contentions in points 4 and 5 are barred by res judicata against parties in Patriarch's group by reason of the decision of the Travancore High Court in Interpleader suit (45 T.L.T. 116) and by reason of the decision of the Supreme court in Samudayam suit (AIR 1959 S.C. 31)?

(7) Whether, Patriarch Yakub Ili by his conduct after the decision of the Supreme Court has accepted the Catholicate established in 1912 by Abdul Messiah and the provisions of the Constitution of the Malankara church governing the relationship between Patriarch and Catholicose and in the matter of appointing successor-Catholicose?

(8) Is the Malankara church essentially episcopal in character?

(9) Are the parish churches constituents of the Malankara church or are they autonomous units independent of the authority of the lawful episcopal hierarchy of the Malankara church?

(10) Whether the plea that the Constitution of 1934, as amended, is not binding on the entire Malankara Syrian Christian community including its dioceses, parishes and members is barred by the law of limitation and can be raised as valid defence to the suit?

(11) Is the Malankara Association a representative body that has the right to bind the whole community and all the churches by its deliberations and actions? Is the contrary contention of Patriarch's group barred by res-judicata by reason of the decision in the Samudayam suit?

(12) Is the Constitution, Ext.A2 adopted by the Malankara Association in its meeting held on 26-12-1934 valid and binding on the entire Malankara church? Is the contention of the defendants that the said Constitution is not valid and binding on the entire Malankara church including its dioceses, parishes and institutions and members barred by res-judicata and constructive res-judicata by reason of the decision in the Samudayam suit?

(13) Whether, having regard to the resolutions passed in the Mulanthuruthy Synod allegedly empowering the Malankara Association with express power to alter/frame rules and regulations concerning the community and parishes, the adoption of the Constitution in 1934 as in any way invalid or void or destructive of the autonomy, if any, of the parish churches?

(14) Whether the defendants are estopped from challenging the amendments to the 1934 Constitution in view of their conduct after the decision of the Supreme Court?

(15) Is the Constitution valid and binding on the Malankara church, its dioceses, parishes, institutions and members? Are the amended versions of the Constitution Ext.A9 and A1 valid and binding? Are any of the provisions of Exts. A2 or A9 or A1 invalid for any reason?

(16) Is the authority for the election of the Diocesan Metropolitans for the Malankara church the whole community as represented by the Malankara Association or the concerned dioceses?

(17) Whether the administration of the properties and assets of the Malankara church is vested in the Malankara Metropolitan for the time being? Was it held so by the Royal Courts of Appeal of Travancore and Cochin?

(18) Has the Malankara church become an autocephalous church? Has the Catholicos group established an autocephalous church?

(19) Are the defendants or others who defy the authority of the Catholicos-cum-Malankara Metropolitan and the Constitution of the Malankara church entitled to function as Metropolitans, priests or deacons in the Malankara church, its dioceses and parishes or to act as office-bearers in the Malankara church, its dioceses, parishes and institutions?

(20) Is administration of the properties and parishes and dioceses/churches vested in the Malankara Metropolitan for the time being. Is it held so in the decisions of the Royal Courts of Cochin and Travancore?

(21) Whether, in view of the conduct of the Patriarch and the former Patriarch group pursuant to the decision in AIR 1959 S.C.31, they can claim that the Patriarch has authority to continue to exercise spiritual powers which existed before the establishment of the Catholicate?

(22) Was there unification in the Malankara church in 1958? Was the authority of the Catholicos-cum-Malankara Metropolitan and the binding

nature of the then Constitution accepted by those who formerly were in the Patriarch group? Are not the latter estopped from contending otherwise?

(23) Do Simhasanam churches form independent units outside the Malankara church? Has the Patriarch surrendered his jurisdiction over them to the Catholicos and the Malankara church and have these churches accepted the altered position? Is the Patriarch competent to claim back any such jurisdiction by his unilateral act?

(24) Are Knanaya churches part of Malankara church and bound by the Constitution and jurisdiction of Catholicos-cum-Malankara Metropolitan and if so, to what extent?

(25) Are the churches established by and attached to the Evangelistic Association of the East situate in the territory of the Catholicate of the East liable to be administered under the Catholicos and the Metropolitans under him, i.e., Malankara Episcopal hierarchy?

(26) Is St. Antony's church, Mangalore part of Malankara church and what relief, if any, are plaintiffs entitled in regard to this church?

(27) Whether the appellants have become apostates by reason of the decision taken by the Universal Episcopal Synod held at Damascus on 16th June 1975 and subsequent days and the declarations following therefrom?

(28) What is the consequence of the non-impleadment of the successor of the first plaintiff in O.S.6/79?

(29) What is the consequence of the successor-Catholicos not filing appeal against the decree in O.S.6/79?

(30) Whether the appeals have become barred by reason of res judicata on account of the abatement of the appeal A.S.357/80 against the decree in O.S.7/79 on account of the fact that the findings in O.S.7/79 of the learned single judge have become final?

(31) Whether Metropolitans ordained by the Patriarch and whose legal status is in challenge in these cases can function as Metropolitans in Malankara church.

19. Points 1 to 3:

(1) Whether Ext.A90 or Ext.B161 is the correct version of Hudaya Canons accepted by the Malankara Jacobite Syrian Community as valid and bind-

(2) Are the plaintiffs barred by res judicata from contending that the binding version of Hudaya Canons is Ext.A90 by reason of the judgment in XLI T.L.R.1, order in the Review Petition and the judgment in 45 T.L.R. 116?

(3) Are the defendants barred by res judicata from contending that the binding version of Hudaya Canons is not Ext.B161 by reason of the decision in the samudayam suit?

20. In deciding some of the important aspects in dispute in these appeals, it is relevant to determine what is the canonical law governing the Malankara Orthodox (Jacobite) Syrian church. Both the groups admit that canons are contained in a work by name Hudaya compiled in Syrian language by Bar Herbreus, Catholicos of Tigris in the 13th century. Parties have produced rival versions of this work. Catholicos group relies on Ext.A90 as the genuine version of Hudaya Canons and accepted by the community as binding on them. Ext.A206 is another copy. This was marked as Ext.A in the interpleader suit, O.S.94 of 1088 of the District Court, Kottayam and Ext.A26 in the Samudayam suit, O.S.111/1113 of the District Court, Kottayam. Patriarch group has produced Ext.B161 photostat copy of what they assert to be the Hudaya canon binding on the community. Ext.B162 is the Malayalam translation of Ext.B161. This was marked as Ext.18 in the Interpleader suit and Ext.BP in the Samudayam suit. Each group relies on its version of the book of canons as valid and binding on the Malankara church and community. Learned counsel appearing for all the parties before us conceded that there is no independent evidence adduced in these cases in support of these versions of the canons. Each group is content to rely on the findings in the earlier litigations as binding on the parties. Each group contends that the contention of the other side is barred by res judicata by virtue of earlier finding. Learned single judge held that the findings in the earlier suits are not conclusive or binding and the contentions of parties are not barred by res judicata and parties have failed to prove which is the binding version of the canons. This finding is challenged by all the parties.

21. The investment of 3,000 star pagodas in East India Company treasury by Mar Dionysius the Great, who was the then Malankara Metropolitan, continues to be an asset of Malankara church. Annual interest is payable to the church. The interest as per an earlier award has to be withdrawn jointly by the Malankara Metropolitan for the time being and two co-trustees, one a Priest and the other a layman to be chosen by the community, i.e., elected by the Association. The Secretary of State filed an interpleader suit impleading the rival trustees of Malankara Association and the suit was converted into a representative suit on behalf of Syrian Christian Population of Malankara. First defendant, Mar Geevarghese Dionysius, Malankara Metropolitan and Ex-officio President of Malankara Association and his co-trustees, defendants 2 and 3 were transposed as plaintiffs. Rival claimants were defendants 4 to 6, 4th defendant being rival Malankara Metropolitan and

defendants 5 and 6 being his co-trustees. On the death of 4th defendant, his alleged successor was impleaded as 42nd defendant. Abdul Messiah was admittedly Patriarch of the Orthodox Syrian Church at one time. Turkish Government within whose jurisdiction Patriarchate was then situated withdrew the firman issued in his favour. Abdulla II was ordained as Patriarch and recognised by Turkish Government. Abdulla II came to Malabar and purported to ex-communicate first defendant and to appoint 4th defendant in his place. Malankara Association at its meeting declared the ex-communication invalid and the first defendant continued as Malankara Metropolitan. The Association removed defendants 5 and 6 from the position of co-trustees and elected defendants 2 and 3 in their places. Thus the rival claims of two sets of rival trustees came to be decided by the court. The question which version of the canons was to be accepted as binding on the Malankara community came up for consideration in view of its impact on the position of Abdul Messiah, viz-a-viz Abdulla II, power of Patriarch to ex-communicate Metropolitans, the procedure for ex-communication and other related matters. The trial court accepted Ext.A as the binding version and held that Patriarch cannot ex-communicate Metropolitans by himself and it can be done only by the Synod and ex-communication of the first defendant was violative of principles of natural justice and therefore void, that the removal of defendants 5 and 6 was valid, that the appointment of 4th defendant was not valid, that the withdrawal of the firman by the Turkish Government of Abdul Messiah did not prevent him from exercising spiritual functions. Accordingly the court held that first defendant and his co-trustees would be entitled to receive the amount due as interest. Defendants 5, 6 and 42 filed an appeal before the Travancore High Court, and the appeal was disposed of by a Full Bench of the Court. The High Court reversed many of the findings of the District Court. The High Court accepted Ext.18 as the binding version of the canon, held that Patriarch had power to ordain and ex-communicate Metropolitans without intervention of the Synod but only after observing principles of natural justice which were observed in the case and therefore ex-communication of the first defendant was valid. The court further held that removal of defendants 5 and 6 was invalid as it was done at a meeting presided over by an ex-communicated Metropolitan, namely first defendant and for the same reason election of defendants 2 and 3 was invalid. The court took the view that 42nd defendant had not proved his status as Metropolitan and he could not step into the shoes of the first defendant. Money deposited was directed to be paid to defendants 5 and 6 and the person to be elected and ordained as Malankara Metropolitan. This decision is reported in XLI T.L.R. 1.

22. Defendants 1 to 3 filed petition to review the above judgment. The High Court allowed the review and directed re-hearing of the appeal subject to the condition that the findings recorded in XLI T.L.R. 1 regarding authenticity of Ext.18, power of Patriarch to ex-communicate Metropolitans without the intervention of the Synod and the absence of oblique motive on the part of Abdulla II in ex-communicating the first defendant will stand, since "the parties had been put to considerable expense already

and as the judgment of this court has been found to be unvitiating by error, except as to a part of it which can easily be separated from the rest." The court in another application directed that if after hearing the parties or in the course of hearing on the issue re-opened, it is found that the point re-opened is not separable from the other issues in the case and the reversal of the decision upon this issue may seriously affect the decision of any other issue or issues in the case, or that a binding and effective decree could not be passed upon the determination of this issue alone, then it will be open to the court to re-open the other issues or even the whole case. Thereupon the court re-heard the matter and on the material question urged, took a view contrary to the one taken in XLI T.L.R. 1. The court held that Patriarch did not observe principles of natural justice before ex-communicating the first defendant and therefore his ex-communication was invalid, that removal of defendants 5 and 6 from the position of trustees was valid and election of defendants 2 and 3 was valid. Accordingly appeal was dismissed. The court further held that first defendant and his group did not become apostates, Chatfield, C.J. in the concluding part of the judgment said:

"In the result therefore by reason of the decision of the contentions as to natural justice and apostacy the appeal must fail quite apart from the decision of the other questions in dispute in this suit. It would not be necessary to consider these other questions even if it were open to this court to do so in view of the orders already referred to."

Joseph Thaliath, J. agreed with the main conclusions in the leading judgment and held that the consequences pointed out in the main judgment necessarily follow and concurred with the decree proposed. Parameswaran-Pillai, J. also agreed with the main conclusions referred to above, and observed:

"As the ex-communication of the first defendant is invalid, defendants 2 and 3 who were elected as trustees in the place of defendants 5 and 6 must be held to have been regularly and validly appointed in their place. As these findings are sufficient for the disposal of this appeal it is unnecessary to consider the other issues in the case.

For these reasons, I agree to the dismissal of this appeal with costs.

The Full Bench decision is reported in XLV T.L.R. 116.

23. The result of the above litigation is that first defendant was found to be the lawful Malankara Metropolitan and defendants 2 and 3 were found to be the lawful co-trustees and all the three were found to be entitled to withdraw the interest amount deposited by the State. Defendants 1 to 3 had been transposed as plaintiffs in the interpleader suit. This would mean that plaintiffs succeeded in the suit. The

District Court and the High Court in its earlier judgment had recorded different findings as to which is the version of Hudaya canon binding on the Malankara church. The ultimate decision of the High Court rested on the finding that Patriarch not having observed principles of natural justice in the proceedings against the first defendant, his order of ex-communication was void. This finding would stand whichever be the version of Hudaya canons binding on the community. The plan of res judicata has to be decided on the basis of the ultimate judgment of the High Court, namely, XLV T.L.R. 116. That judgment did not decide the question as to which of the versions is the binding version. As a matter of fact, the dispute as to which of the versions was the binding version did not have any effect on the ultimate decision in the case. The finding in XLI T.L.R. 1, which was accepted as one of the conditions in allowing the review petition is a finding against the party who ultimately succeeded in the appeal.

24. The condition was relaxed in another application filed by defendants 1 to 3 by holding that if it becomes necessary, these findings also could be re-agitated in re-hearing the appeal. Chatfield, C.J. in paragraph 9 of the decision in XLV T.L.R. 116 observed:

"The appeal has been now reheard on the basis of the above orders. The 5th and 6th defendants are now dead; so the contest is between the 42nd defendant on the one hand and the defendants 1 to 3 on the other. The result of the various orders above referred has been that the decision of this court passed on the original hearing of the appeal has been set aside and as such it no longer has any force or validity. The decree of the District Court has been reviewed subject to the result of the rehearing of the appeal. In disposing of the appeal however this court has to regard the findings on certain of the questions in the case which were recorded in the former judgment as correct and cannot come to a different conclusion in this judgment."

This would mean that the three findings which were sought to be protected in the order on the review petition became final only conditionally, condition being that if after hearing the parties it was found necessary to reopen the other issues the court could do so. In the litigation which ended with the decision in XLV T.L.R. 116, it cannot be said that those findings were either necessary for the ultimate disposal of the case or that they are binding on the parties who ultimately succeeded in the case. Parties who ultimately succeeded in the case were Malankara Metropolitan and his co-trustees. The suit itself was a representative suit representing the Orthodox Syrian Christian Population of Malankara.

25. For the above reasons, we agree with the learned single Judge that the decision in XLI T.L.R. 1 that Ext.P18 therein (Ext.BP in the Siamudayam case and

Ext.B161 in these cases) is the version of Hudaya canons accepted as binding on the Malankara church has not become concluded and does not operate as res-judicata between the parties.

26. Samudayam suit in the District Court, Kottayam was occasioned by disputes between the same two groups, namely, Patriarch group and Catholicos group. Plaintiffs in that suit, namely, Mar Poulouse Athanasius and his co-trustees claimed to have been appointed as Malankara Metropolitan and co-trustees at the meeting of the Malankara Association convened by the first plaintiff and held at Karingasseri. They filed the suit against the first defendant, Catholicos-cum-Malankara Metropolitan, Basselious Geevarghese II and trustees and others of his group seeking declaration that first plaintiff was the lawful Malankara Metropolitan and Plaintiffs 2 and 3 were the co-trustees entitled to administer the common properties of the Malankara church and that defendants 1 to 3 were pretenders and trespassers and to recover possession of the trust properties from them and directing them to render accounts and surrender properties and for an injunction restraining first defendant from doing any act in his capacity as Catholicos and defendants 2 and 3 from acting as his co-trustees. It has to be noticed that Malankara Metropolitan is the ex-officio President and trustee of the Malankara Association. It was common case that Malankara Metropolitan must be accepted by election or selection by the community represented by the Malankara Association. Plaintiffs challenged the alleged election of the first defendant as Malankara Metropolitan at the meeting held at M.D. Seminary, Kottayam short while before the alleged election of the plaintiffs. Plaintiffs contended that first defendant and his group had become heretics and alien to the faith by opposing true Patriarch Abdulla II and supporting the pretender Abdul Messiah and he and his group had given up allegiance to and had gone out of the church and established a new church and framed a Constitution granting Patriarchal powers to the Catholicos which usurpation amounted to rejection of Patriarch and his dignity and to heresy. The suit was a representative suit. Defendants 1 to 3 denied the material averments in the plaint and contended that Catholicate of the East which originally had its headquarters at Selucia and later at Tigris exercised jurisdiction over Malankara and continued to be so for a long time till a Catholicos was appointed at Malankara by Patriarch Abdul Messiah, that none of the acts alleged amount to heresy or to usurpation or rejection of dignity of Patriarch or cessation from the ancient church or establishment of a new church. The question as to which of the versions of the Hudaya canons is the version accepted as binding in the Malankara church also came up for consideration. The court, inter alia, found that the meeting at which plaintiffs 1 to 3 were elected was convened without notice to all the churches and in particular to churches owing loyalty to Catholicos and therefore the meeting was not validly convened and the plaintiffs' election was invalid, that defendants had not become heretics or alien and had not gone out of the church or founded a new church. Accordingly District Court dismissed the suit. On issue No.13 relating to canons District Court upheld the version propounded by Catholicos group

namely, Ext.A26 (Ext.A in the Interpleader suit and Ext.A90 in the present litigation). Plaintiffs filed appeal before the Travancore High Court. The appeal by the plaintiffs was allowed and the suit was decreed by the Full Bench of the Travancore High Court in the decision reported in 1946 T.L.R.683. In regard to canons, the High Court upheld Ext.BP set up by the Patriarch group. Defendants 1 to 3 applied for review of the judgment and that was dismissed. In appeal Supreme Court allowed the review petition in AIR 1954 S.C.526 with direction to the High Court to rehear the appeal. Appeal was re-heard and again allowed in the decision reported in 1957 KLT 63. Suit was decreed reversing the decision of the District Court. Defendants 1 to 3 challenged the same in appeal before the Supreme Court which disposed of the same by the decision reported in AIR 1959 S.C.31. The Supreme Court set aside the judgment of the High court and restored the decree of the District Court. Thus the Samudayam suit ended with decision against Patriarch group and confirming the decree passed by the District court dismissing the suit.

27. Catholicos group contended that the finding of the District Court in the Samudayam suit upholding Ext.A26 namely, present Ext.A90 as binding version of Hudaya canons has become concluded and Patriarch group is precluded from setting up rival version on account of res judicata. When confronted with the argument of the other side that the finding of the District Court on this question was reversed by the High Court which upheld the rival version propounded by the Patriarch group, the answer is that (i) finding of the District Court is by implication accepted by the Supreme Court and (ii) restoration of the decree of the District Court restores the finding of the District Court. Patriarch group further contends that determination of the question as to which is the binding version of Hudaya canons was wholly unnecessary in the light of the narrow question on which the Supreme Court decided the case and therefore the finding of District Court may not be concluded by res judicata. Learned counsel appearing for the Catholicos group also relied on certain observations in the Supreme Court judgment. To appreciate these contentions it is necessary to study closely the judgment of the Supreme Court.

28. The Supreme court held that plaintiffs having brought the suit claiming to be trustees, suit must be regarded as brought on the strength of title and their title is based on their election at the meeting held at Karingasseri. The meeting was admittedly held without notice to members of the Catholicos group as they were quite erroneously regarded as having gone out of the church. The Supreme Court therefore held that the meeting was not lawful, and the decisions at the meeting were not binding on the community and therefore election of the plaintiffs was unsustainable. The Supreme Court further held that defendants and their group had not become ipso-facto heretics or allens and had not gone out of the church and hence the meeting without notice to the parishes owing loyalty to Catholicos group was not a valid meeting and therefore election of the plaintiffs was not valid and the suit based on title must fail. This will clearly show that question as to which of the versions of the Hudaya

canons is the version accepted by and binding on the Malankara community was not at all necessary to be decided by the Supreme Court. The decision rested only on two aspects as indicated above, namely, whether the meeting which elected plaintiffs was valid and whether defendants had become ipso-facto heretics or aliens etc. In fact a perusal of the judgment of the Supreme Court shows that the question as to which version of the Hudaya canons is to be upheld was not even considered by the Supreme Court. That was because the decision rested on the plaintiff's failure to prove title and to prove that defendants had become ipso-facto heretics etc.

29. Plaintiffs were allowed by the Supreme Court to argue their case not merely on the strength of their title but also as members of the Christian community suing in a representative capacity. Various grounds alleged to be constituting heresy or amounting to going out of the church or forming a new church were considered by the Supreme Court, which held that in the interpleader suit identical contentions had been rejected and the contentions of the Patriarch group were barred by res judicata. (Vide the conclusion in paragraph 32).

30. Patriarch group urged before the Supreme Court that apart from the grounds set up in the interpleader suit they relied on cause of action founded on new charges which disqualify the defendants in the suit from acting as trustees of the church properties; the new charges were:

(i) By adopting the Constitution of 1934 which takes away the supremacy of the Patriarch, defendants had set up a new church.

(ii) By inserting clause (5) in the Constitution declaring Ext.A90 as the true version of the canons binding on the church, defendants had repudiated the canons which had been found to be the true canons binding on the church in the Interpleader suit and had thereby gone out of the church.

(ii-a) The privilege of the Patriarch alone to ordain Metropolitans and to consecrate Morone had been taken away as a consequence of the adoption of the wrong version of the canons indicating that defendants set up a new church.

(ii-b) The privilege of the perquisites of the Ressisa had been denied to Patriarch by the new Constitution in breach of the true canons.

(iii) That there had been a complete transfer of the trust properties from the beneficiaries, namely, Malankara Jacobite Syrian Church to the new church.

(iv) Re-establishment of the institution of the Catholicate of the East in Malabar having jurisdiction over India, Burma, Ceylon and ther countries in

the East was different from the institution of Catholicate that was the subject matter of the Interpleader suit.

31. The Supreme Court held that charges (i), (ii) and (ii-a) did not arise from the pleadings in the case and declined to permit the plaintiffs to urge those charges. With reference to charges (ii) and (ii-a) relating to canons plaintiffs relied on the finding on issue Nos.13 and 16 to contend that loss of status of Catholicos group as members of the Malankara church by acceptance of the wrong canons was within the scope of those two issues and that parties to the suit went to trial with that understanding. The Supreme Court rejected these contentions by referring to the pleadings which indicated how and why Hudaya canons came to be pleaded and discussed in the case. Plaintiffs imputed certain acts and conduct to the defendants and contended that by reason thereof the defendants had become heretics or aliens or had gone out of the church and these imputations formed subject matter of issues 14 and 15 and the conclusions to be drawn from the findings on those issues were the subject matter of issue Nos.16 and 17. Defendants similarly imputed certain acts and conduct to the plaintiffs as a result of which according to them, plaintiffs had separated from the church and constituted a new church. Issues 19 and 20 were directed to this counter charge. The Supreme Court thereupon observed in paragraph 35:

"In order to decide these charges and counter charges it is absolutely necessary to determine which is the correct book of canons, for the plaintiffs founded their charges on Ext.BP - Ext 18 in O.S. No.94 of 1088 and the defendants took their stand on Ext.26 - Ext A in O.S. 94 of 1088. Issue No.13 was directed to determine that question. Issue No.16 is concerned with the conclusions to be drawn from the findings on issues Nos.14 and 15. The plaintiffs cannot be permitted to use issue No.16 as a general issue not limited to the subject matter of issues 14 and 15, for that will be stretching it far beyond its legitimate purpose".

It is true that in order to decide issues 14,15,16,17,18,19 and 20 it was necessary to answer issue No.13 regarding the binding version of Hudaya canons. The District Court decided the issue in favour of the Catholicos group and the High Court decided the issue in favour of Patriarch group. This does not mean that findings were really relevant or necessary for the ultimate decision in the litigation by the Supreme Court. Issues 14 to 17 and 19 and 20 were raised by the plaintiffs and had to be decided. The District Court and the High Court recorded conflicting findings and the Supreme Court held that defendants, as alleged by the plaintiffs, had not become heretics or aliens and had not gone out of the church and had not founded a new church by virtue of certain actions referred to by the plaintiffs. Equally plaintiffs also had not become subjected to such disability. This finding rested not on any version of the canons but on the ground that admittedly the canons relied on by both groups or any

other ecclesiastical law did not provide that by such alleged act of the two groups, they would ipso-facto become heretics or aliens or would be deemed to have gone out of the church or founded a new church. We have already pointed out that the Supreme Court did not decide as to which was the binding version of Hudaya canons. It is seen that the ultimate decision of the Supreme Court did not rest on either version of the Hudaya canons. Therefore, the observations in paragraph 35 referred to above cannot support the plea of res judicata raised by the Catholicos group. Supreme court cannot be said to have decided the question by implication.

32. The Supreme Court set aside the judgment of the High Court and restored the decree of the trial court, decree being one of dismissal of suit. According to Sri Nariman, appearing for the appellants, restoration of the decree restored findings of the District Court. What was restored was the decree of the trial court and not the judgment of the trial court. "Decree" is defined in S.2(2) of the Code of Civil Procedure as the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The adjudication was that the plaintiffs had no title to sue and defendants had not become heretics or aliens and had not gone out of the church or formed a new church and the suit deserved to be dismissed. "Judgment" is defined in S.2(9) of the Code of Civil Procedure as the statement given by the judge of the grounds of a decree or order. When the decree of the trial court is restored, automatically judgment of the trial court is not restored. The trial court had its own reasons for dismissing the suit. The Supreme Court had its own reasons for confirming the dismissal of the suit. Therefore, the reasons given by the Supreme Court must be treated as reasons in support of the decree which ultimately took shape. In other words, the decree in the Samudayam suit stands for the reasons given by the Supreme Court and not for the reasons given by the trial court. When a decree is challenged in appeal finality of the decree is lost. Once an appeal is disposed of it is the appellate judgment which should be considered for the purpose of deciding the question of res judicata. Appellate judgment supersedes the judgment of the trial court, and it is no longer open to look into the judgment of the trial court except to the extent it might have been specifically confirmed by the appellate court. See *Benodlal Chakravarty v. Secretary of State for India* (AIR 1931 Cal. 239) and *Venkiteswarulu v. Venkitanarasimham & others* (AIR 1957 A.P. 557)

33. We have already seen that finding of the District Court regarding canons was reversed by the High Court. The Supreme Court did not pronounce on the question. That being so, it cannot be said that the Supreme Court by implication upheld the finding of the District Court or that of the High Court. The finding of the District Court lost its vitality when the High Court decided the appeal. The finding of the High Court ceased to be conclusive when the Supreme Court decided the case on specific grounds recited in the judgment and without going into the validity of the grounds having relation to the canons. Where the trial court disposes of a suit on more

than one ground and the appellate court finds that decision on one ground is sufficient to dispose of the appeal and decides that ground and disposes of the appeal, what is conclusive is only the ground so decided. The finding of the trial court which did not come up for consideration before the appellate court and which was not as a matter of fact considered because it was not necessary to be considered cannot be res judicata. See *Sheosagar v. Sitaram* (I.L.R. 24 Cal. 616) (P.C.), *Abdulla Azhgar Ali Khan v. Ganesh Dar* (AIR 1917 P.C. 201), *Venkitaratnamma & others v. Krishnamma & others* (1921) 13 L.W. 35 (FB) = AIR 1921 Madras 21). Law is also well settled that where a finding on an issue is not necessary for the disposal of the suit, the finding therein is not res judicata. See *Midnapur Zamindari Co. Ltd. v. Naresh Narayan Roy* (AIR 1922 P.C. 241) and *Arjun Singh & others v. Tara Das Ghosh & others* (AIR 1974 Pat. 1(F.B.)).

34. Sri Nariman, learned counsel for the appellants, relying on *Midnapur Zamindari Co. Ltd. v. Naresh Narayan Roy* (AIR 1922 P.C. 241), submitted that even if the finding is not res judicata it shifts the burden of proof. In that case there was an earlier suit by the respondent's father for possession where the defendant pleaded occupancy right and also that the suit was premature. The Sub Court held that defendants had no occupancy right but the suit was premature and dismissed the suit. Both sides preferred appeals before the appellate court. Appellate court agreed that the suit was premature which finding would have been sufficient to sustain the decree. Counsel for the defendants pressed his challenge against the finding against right of occupancy. Appellate court expressed its view that it would be a monstrous straining of the law to apply the term "right of occupancy, to such an estate as this". The question was whether the alleged finding regarding occupancy right was conclusive. The Privy Council held that it is not sufficient to find the actual plea of res judicata since the defendants having succeeded on the other plea had no occasion to go further as to the finding against them. The Privy Council further observed that "it is the finding of a court which was dealing with facts nearer to their ken than the facts are to the Board now, it certainly creates a paramount duty on the appellants to displace the finding, a duty which they have not been able to perform". Taking the observations as a whole, we are not able to agree that the decision lays down any general principle of shifting of the burden of proof. The observation is made in the peculiar fact situation of the case and cannot have general application. As observed in *Prahlad Chandra Singh v. Bhim Mahto and others* (AIR 1940 Patna 341), observations of the Privy Council must be read with reference to the facts of the case. The observation relates to the probative value of a finding which does not operate as res judicata. In the *Samudayam* suit the High Court has reversed the findings of the District Court in regard to canons, and the Supreme Court has not expressed any view on the same; it is difficult to accept that the finding of the District Court survives and shifts the burden of proof. We therefore reject the contention that the finding of the District Court in the *Samudayam* suit operates as res judicata or shifts burden of proof.

35. Since there is no independent evidence on the basis of which we can hold either of the versions to be the version binding on the Malankara Orthodox Syrian Christian community and since findings in the previous litigations are not *res judicata*, we have to hold that neither version of the canons is proved to be the version binding on the community. This of course will not preclude us from acting on those provisions of the rival versions which are identical but we cannot act on the conflicting provisions of the two versions. Points answered accordingly.

36. Points 4 to 6:-

(4) Whether the Catholicate established under Ext.A14 by Patriarch Abdul messiah with powers as provided for in Ext.A14 is valid and binding on the entire Malankara Church?

(5) Whether by such establishment of the Catholicate the Patriarch was deprived of his powers to ordain Metropolitans, consecrate/send Morone or to exercise any other spiritual power over the Malankara Church thereby reducing his powers to a vanishing point?

(6) Whether contentions in points 4 and 5 are barred by *res judicata* against parties in Patriarch's group by reason of the decision of the Travancore High Court in Interpleader Suit (45 TLR 116) and by reason of the decision of the Supreme Court in Samudayam Suit (AIR 1959 SC 31)?

37. There is no dispute that there was an institution by name Catholicate of the East in the early centuries and it fell into disuse later. According to Catholicos group, this was re-established in Malankara by Patriarch Abdul Messiah as per Ext.A13(a) Kalpana of 1912 and Ext.A14 Kalpana of 1913. Some of the parties to the litigation belonging to the Patriarch group deny that a valid Catholicate was re-established. Catholicos group further contends that by such establishment power of Patriarch has been reduced to a vanishing point.

38. A convenient comparative table of the various provisions in the rival versions of the Hudaya Canons is found at page 36 to 41 of the decision reported in XU TLR 1. Since neither version is acceptable, we can consider only provisions common to both versions. The canons basically contain decisions of various Councils of the Bishops of various churches in the world. We are concerned with the decisions of the Council of Nicea. Both the versions indicate that there shall be "four Patriarchs according to four quarters of the world, namely, Patriarch of Rome; and with him that of Alexandria; and with him that of Constantinople;; with him that of Antioch, who is in authority over all the East;she (Jerusalem) shall have from to-day forward the honour of the fifth Patriarchate....."

And to the great Metropolitan of the East is from this time onwards given the authority to consecrate Metropolitans in the East like Patriarchs, and he (the great Metropolitan) shall be proclaimed Catholicos; and when he attends the Synod of the West, his throne shall be arranged above all the Metropolitans with the Patriarch of Jerusalem"

According to Ext.B161, the Catholicos shall act according to orders of and be subject to the Patriarch of Antioch and shall not defy his superior. In Ext.A90 it is further stated that "Patriarch of Antioch shall not enter the eparchy of Tigris by way of administration, except when invited; and the Maphrian shall not enter those of the Patriarch.", but this provision is absent in Ext.B161. Ext.A90 also states that "When the Maphrian is present with the Patriarch of Antioch, he shall sit first at his right hand, and shall be proclaimed after him, and shall receive the Eucharist after him." In the rival version, Patriarch of Antioch is described as "who is his head or superior". Ext.A90 states that "Patriarch shall not be consecrated without the assent of the Maphrain, if he is alive; otherwise, the Easterns have the right to consecrate by themselves a Maphrian for them. Concerning whether the Maphrian or the head of the Synod shall lay hands on the Patriarch, the Easterns shall elect two Bishops and the Westerns two; and whom these four approve he shall lay hands." In the rival version the second sentence is absent and instead it is stated "The Easterns have no right to consecrate for themselves a Maphrian, Metropolitan or a Bishop in defiance of or against the will of the Patriarch of Antioch". In Ext.B161 it is stated that "Maphrian has power to consecrate Metropolitans and Episcopas. If there is not the Maphrian, Metropolitans have no power to consecrate one another. But the Patriarch should consecrate them." In Ext.A90 the Patriarchal See but not the Catholicate is referred to as having a Throne.

39. In Ext.A13(a) Kalpana of 1912 issued by Patriarch Abdul Messiah, it is stated that the Malankara Metropolitan Mar Evanious has been selected to the position of Catholicos at the Parumala meeting, that his fitness from the ecclesiastical point of view has been examined by the Patriarch and he has been found to be fit to be Catholicos. It mentions that Patriarch has been persuaded to retain him as Catholicos or Maphrian to look after all spiritual needs in accordance with the faith of the community, that Mar Evanious appeared before him at his request and has been ordained as Catholicos of the East or Maphrian of India and other places, that is, Catholicate of the Throne of St. Thomas and is authorised to attend to the spiritual functions, namely, ordaining Metropolitans and Episcopas, consecrating Holy Morone, attending to all other spiritual matters in particular to reign over the Kandanad Diocese (then Malankara had only one Diocese). Patriarch also exhorted the faithful to obey and love the Catholicos.

40. Ext.A13(a) was followed by Ext.A14 Kalpana dated 19-2-1913 issued by Patriarch Abdul Messiah. It begins by blessing "our beloved Catholicos and others in the Malankara Church". It refers to the discord shown by Abdulla II and warns them

about his satanical deeds. It shows that in response to the request of the Malankara Christians Abdul Messiah "ordained Maphrian, that is, Catholicos by name; Poulouse Basselios and three new Metropolitans, the first being Gheevarghese Gregorius, the second, Joachim Evanios and the third Gheevarghese Philexinos" and proceeds to state that "It appears to us that, unless we do instal a Catholicos, our Church, owing to various causes, is not likely to stand firm, in purity and holiness. And, now, we do realise that by the might of our Lord, it will endure to Eternity, in purity and holiness, and more than in times past be confirmed in the loving bond of communion with the Throne of Antioch.....As for ourselves, we leave you. Rest assured that though we leave you we shall never be unmindful of you.....Pray Ye for us and for Our entire community.....We rest confident that the Catholicos and Metropolitans -- your shepherds -- will fulfil all your wants. The Catholicos, aided by the Metropolitans, will ordain melpattakkars, in accordance with the Canons of our Holy Fathers and consecrate Holy Moronie. In your Metropolitans is vested the sanction and authority to instal a Catholicos, when a Catholicos dies. No one can resist you in the exercise of this right and do all things properly, and in conformity with precedents with the advice of the committee, presided over by Dionysius, Metropolitan of Malankara. We beseech your love,.....Ye faint not in your true faith of Saint Peter, on which is built, the Holy Catholic and Apostolic Church. What we enjoy your true love is that the unlawful conduct of a usurper, may not induce you to sever that communion which is the bond of love connecting you with the Apostolic Throne of Antioch. We realise that you are obedient, as have been your virtuous ancestors before you. This is sufficient for your enlightenment."

41. The Nicean Council refers to six institutions, namely, Patriarchates of Rome, Alexandria, Constantinople, Antioch, Bishopric of Jerusalem which is conferred the honour of the fifth Patriarch (because of its association with the birth place of the Lord) and also the Great Metropolitanate of the East. The Nicean Council decided that from that date onwards the Great Metropolitan of the East shall be proclaimed Catholicos and shall have the authority to consecrate Metropolitans in the East like Patriarchs. In the Synod his Throne shall be above all Metropolitans with the Patriarchate of Jerusalem. The Catholicate was originally at Selucia and later at Tigris and thereafter it fell into disuse. Catholicate of the East was always associated with the Patriarch of Antioch. Jurisdiction of the Catholicate of the East has always been in a part of the jurisdiction of the Patriarchate of Antioch. Exts.A13(a) and A14 Kalpanas clearly indicate that the Malankara Orthodox Syrian Christian community was beset with problems of accessibility to the Patriarch of Antioch. Evidently the gap of geography, distance and time created distress to and helped to createdissensions in the community here. As observed in the two Kalpanas, the community desired a superior spiritual personality in Malankara who can attend to their needs. It was in these circumstances that Abdul Messiah who had come down to Malankara ordained the then Malankara Metropolitan as Catholicos and ordained three new Metropolitans and put the Catholicate on an institutional basis by declaring

that Catholicos shall ordain Metropolitans and consecrate Holy Morone and successive Catholicos shall be installed by the Metropolitans. Till then there was only one Metropolitan in Malankara. Three new Metropolitans were ordained with a view to institutionalise the Catholicate. The establishment of the Catholicate and other basic provisions in Ext.A13(a) and Ext.A14 are consistent with the common provisions in the rival version of the Canons. Hence there can be no doubt that what Exts.A13(a) and A14 did was to revive or re-establish the Catholicate which was originally at Selucia and later at Tigris.

42. It is argued by Sri.Padmanabhan that revival of the Catholicate in Malankara was not a valid act. The argument is that the Patriarch had no power to revive or re-establish the Catholicate. Though in some of the pleadings we find an averment that establishment or revival of Catholicate is not valid and binding on the Malankara Church, no pleading contains grounds on which the validity is challenged. If the Patriarch of Antioch was the supreme spiritual head of the Orthodox Syrian Church in all the East and if Catholicate was religious office which functioned within the jurisdiction of Patriarchate, and it may be noted the supremacy of the Patriarchate of Antioch or more correctly the erstwhile supremacy is not under challenge, the only legitimate conclusion is that Patriarch of Antioch had full authority to revive the defunct Catholicate and ordain Catholicos and to make such other arrangements as were necessary to maintain and continue the Catholicate. That was what was done by virtue of Exts.A13(a) and A14. No Canonical authority has been placed before us to indicate absence of any power in the Patriarch of Antioch to revive the Catholicate or to arrange a scheme as found in Ext.A14 for perpetuation of Catholicate. By Ext.A14 the Catholicos in Malankara has not been given any power in excess of what the Maphrian or Catholicos was recognised to have under the rival versions of the Canons.

43. The second line of attack against the validity of the Catholicate rests on the authority of Abdul Messiah as Patriarch. Admittedly Abdul Messiah was installed as Patriarch prior to the installation of Abdulla II. At that time Patriarch was functioning within the Turkish jurisdiction. The Turkish Government withdrew the firman granted earlier recognising Abdul Messiah as Patriarch. Subsequently Abdulla II was installed as Patriarch. In the interpleader suit, one of the charges against first defendant (transposed as plaintiff) was that he supported Abdul Messiah who had ceased to be Patriarch and defied the authority of Abdulla II and thereby had become alien and ceased to be a member of the church. This contention was rejected ultimately by the Full Bench of the Travancore High Court in XLV TLR 116. In doing so, High Court had to consider whether Abdul Messiah was competent to act as Patriarch. Patriarch group had a contention that prior to the withdrawal of the firman by the Turkish Government, Abdul Messiah had been synodically removed or deposed from his office. The High Court indicated that such synodical removal had not been proved. The High Court indicated that both versions of the Canons contemplate simultaneous existence of two Patriarchs, one of whom should reign and the other should sit idle. Chatfield C.J.

observed : "Two things seem to be conceded on both sides, namely that the Firman issued to Abdul Messiah was withdrawn and that such withdrawal in itself has no effect on the exercise by a Patriarch of purely spiritual functions.....In addition it is extremely hard to ascertain on the evidence before the court that the person recognised by the first defendant as Patriarch had no claims to be regarded as such. The possible existence of two Patriarchs at the same time is recognised by the Canon irrespective of any dispute as to matters of faith. It is true that one of them should sit idle but as to what will happen if he does not but does such acts as consecrating Morone or ordaining Metropolitan there are no means of knowing." Chatfield C.J. further observed: ".....In any case it is not contended that the appointment of a Catholicos is a thing which is in itself forbidden and to work for which is a sign of disloyalty to the church. In the Canon of Nicea as given on both Exts.A. and 18 there is express provision for a great Metropolitan of the East who was to have power like the Patriarch to consecrate Metropolitans in the East."

Parameswaran Pillai, J. observed: "At best what he did was, when Abdulla and Abdul Messiah both claimed to be the Patriarchs of Antioch, he acknowledged the latter as the true Patriarch in preference to the former. If he was wrong in this he has committed a spiritual offence for which his spiritual superiors might punish him in a proper proceeding. This court has nothing to do with his spiritual offence." We reiterate that our attention has not been drawn by any of learned counsel who appeared before us to any evidence in this case to indicate that Abdul Messiah had been synodically removed or deposed and, therefore, he ceased to possess spiritual powers of Patriarch. The fact that temporal government withdrew his recognition cannot affect the spiritual standing and position of Abdul Messiah. The Canons themselves admit of a situation where there could be two Patriarchs. Effect of duality was sought to be got over in the Canons by stating that one should reign and the other should sit idle. Of the two rivals undoubtedly Abdul Messiah was the senior. Without anything more, we cannot assume that he was the Patriarch who should have sat idle. Hence we hold that it is not proved that Abdul Messiah had canonically ceased to be Patriarch and was devoid of spiritual powers when he issued Exts.A13(a) and A14. The challenge against the validity of the revival of the Catholicate must fail.

44. The next question is whether by reviving the Catholicate, Patriarch was deprived of his power to ordain Metropolitans and consecrate Morone etc. "thereby reducing his power to a vanishing point"? We have already referred in some detail to the provisions of Exts.A13(a) and A14 whereby the Catholicate of the East was revived in Malankara and Catholicos was installed with power to ordain Metropolitans and consecrate Morone which power is recognised in the Maphrian or Catholicos of the East in both versions of the Canons. Canons recognise authority of both Patriarch and Maphrian or Catholicos of the East to ordain Metropolitan and consecrate Morone. Neither version of the Canons indicates that this power of any one of the dignitaries is subject to the power of other. There is nothing in the rival versions

of the Canons or Exts.A13(a) and A14 to indicate that when the Catholicate is revived with power in the Catholicos to ordain Metropolitans and consecrate Morone, the pre-existing power in the Patriarch was intended to be taken away or given up. There is no dispute about the amplitude of the pre-existing powers of the Patriarch. In the Cochin Royal Court of Appeal case (Ext.B110), which of course was not a representative action, the Final Court of Appeal in the then Cochin State held that Patriarch of Antioch was the paramount ecclesiastical authority over the Malankara See. The Travancore Royal Court of Final Appeal in Ext.B74 judgment which, as learned single Judge indicated in the judgment under appeal, has been accepted by both the groups, held that "the ecclesiastical supremacy of the See of Antioch over Syrian Church in Travancore has been all along recognised and acknowledged by the Jacobite Syrian Community and their Metropolitans from time to time to manage the spiritual matters of local church, in sending Morone to be used in churches in this country for baptismal and other purposes and general supervision over the spiritual government of the church." The court also held and this is not challenged by any one that the authority of Patriarch was never extended to government of temporalities of the Malankara Church. It is seen that Patriarch of Antioch was recognised to have general supervision over the spiritual government of Malankara Church. That power has not been taken away expressly or by necessary implication by Exts.A13(a) or A14.

45. It is argued by Sri.Nariman that the co-existence of two authorities with like powers could not have been in the contemplation of the Nicean Council or of the Patriarch Abdul Messiah and duality power should not be encouraged. So far as consecration of Morone is concerned, that is allowed for the Patriarch as well as Catholicos by the Canons and power of Catholicos in this behalf was reiterated in Ext.A14. If Canons recognise authority of two spiritual dignitaries to consecrate Morone, it is futile at this stage to contend that Ext.A14 is bad because it creates duality power. Duality has always existed and was not a phenomenon created by Abdul Messiah. Dual authority to consecrate Morone cannot be regarded as something undesirable. One may perhaps visualise duality of power to ordain Metropolitans leading to complications. The question may be asked as to what is to happen if both dignitaries indiscriminately ordain Metropolitans. So far as Malankara Church is concerned, such a contingency cannot occur. The Mulanthuruthy Synod representing the entire community decided on establishment of an organisation by name Syrian Christian Association which is to have a Chief Committee entrusted with complete responsibility and management in all the affairs of the church and the community. The question regarding power of Patriarch to ordain Metropolitans had come up for consideration in the litigations referred to earlier. The Travancore Royal Court of Final Appeal held that Malankara Metropolitan should be a native of Malabar consecrated by Patriarch or by duly authorised delegate and accepted by the people as their Metropolitan to entitle him to spiritual and temporal government of local church. In all the subsequent decisions this idea has been re-iterated. In the light of the Mulanthuruthy Synod decision, acceptance of the community must be under-

stood to mean acceptance by the community through the Association which is the representative body of the community. Therefore, no Patriarch can ordain as Metropolitan a person not acceptable to the community, i.e., the Association. This disability will attach to Catholicos also. Therefore, the question of two dignitaries ordaining two different persons as Metropolitans either of Malankara or of a diocese does not arise, for the community or the representative Association will accept only one and not both; however the Patriarch could not be regarded as having active spiritual supremacy.

46. Sri. Nariman also contended that by virtue of the establishment of the Catholicate, power of Patriarch reached a vanishing point. For this purpose learned counsel relies on the observations in paragraph 32 of the judgment of the Supreme Court in AIR 1959 SC 31. The Supreme Court observed that the Interpleader suit decided that "neither (a) the repudiation of Abdulla II, nor (b) acceptance of Abdul Messiah who had ceased to be a Patriarch, nor (c) acceptance of the Catholicate with powers as hereinbefore mentioned, nor (d) the reduction of the power of Patriarch to a vanishing point ipso facto constituted a heresy or amounted to voluntary separation by setting up a new church and that being the position those contentions cannot be re-agitated in the present suit." This does not mean that in the view of the Supreme Court the interpleader suit actually decided that there was reduction of power of Patriarch to a vanishing point by virtue of the establishment of Catholicate. Their Lordships were only indicating that interpleader suit decided that reduction of power of Patriarch to a vanishing point, if any, did not ipso facto lead to heresy or the Catholicos group becoming alien to church or going out of church. This is clear from a reading of the final judgment in the interpleader suit in XLV TLR 116. There was no contention in that suit that Patriarch had lost all his powers. We find the words "vanishing point" used only in paragraph 34 at page 186. We quote: "By this last action (establishment of Catholicate by Abdul Messiah) the church obtained a boon which had been long desired and which had been refused by previous Patriarchs. This boon was that there would in future be an ecclesiastical superior resident in the country, who could ordain Metropolitans and consecrate Morone, and thus the expense and inconvenience of having to resort to Syria for these purposes would be avoided. At the same time it is contended that the tie between this church and the See of Antioch was weakened almost to a vanishing point, as the Patriarch would ordinarily have no occasion in the future to intervene in Malankara." Though Chatfield C.J. referred to this argument, learned Judge did not consider the validity of the argument and did not express any opinion about it. Therefore, it is not possible to agree that there was, in the previous litigation, any finding as to the revival of Catholicate resulting in reduction of power of Patriarch to a vanishing point.

47. It is also argued that validity of revival of Catholicate and reduction of power of Patriarch to a vanishing point are contentions barred by res judicata against Patriarch group by virtue of the decision in the interpleader suit and the

decision of the Supreme Court in the Samudayam Suit. We are not able to agree that there is any decision in either of the litigations regarding validity of the establishment of the Catholicate or the reduction thereby of the power of Patriarch to a vanishing point. Learned single Judge rejected the plea of *res judicata* and with respect, we agree with his view.

48. Sri. Nariman contended that in the Samudayam suit the Patriarch group might and ought to have challenged the validity of the establishment of the Catholicate and since it was not so challenged, the present challenge is barred by constructive *res judicata* within the meaning of Explanation 6 to S.11 C.P.C. The Samudayam suit was filed by persons claiming to be the Metropolitan Trustee and co-trustees in the Patriarch group against the Catholicos-cum-Malankara Metropolitan (Metropolitan trustee), his co-trustees and others of the Catholicos group. The suit was for declaration that the first plaintiff was the lawful Malankara Metropolitan and the other plaintiffs were the lawful co-trustees entitled to administer the suit properties belonging to Malankara church in common and that defendants 1 to 3 were pretenders and trespassers in wrongful possession and to compel them to render accounts and surrender properties and for injunction restraining first defendant from any act in his capacity as Malankara Metropolitan or Catholicos and defendants 2 and 3 from acting as the lawful trustees. As the Supreme Court observed in the ultimate decision reported in AIR 1959 SC 31 (paragraph 20), if plaintiffs were to succeed they must do so on the strength of their own title. Plaintiffs based their title to trusteeship on their election at the Karingasseri meeting held on 22-8-1935 and the Supreme Court took the view that since the meeting was held without notice to members of the opposite group, it was not a valid meeting, and therefore, plaintiffs' election was not valid and the suit in the nature of ejection must fail for want of title. It was argued before the Supreme Court that exclusion of the members of the Catholicos group from the meeting was justified since they and their partisans had become *ipso facto* heretics or aliens or had gone out of the church, a contention rejected by the Supreme Court on the ground that various acts attributed to that group did not have such automatic consequence. The Supreme Court referred to the contention before the Full Bench in the interpleader suit that acceptance of the establishment of Catholicate by Abdul Messiah led to establishment of a new church and the defendants in that suit became heretics and the fact that the court in the interpleader suit rejected that contention. The Catholicate is an ecclesiastical office or dignity and has nothing to do with the management of the Malankara Church property. The essential dispute in the Samudaysm suit related to the question as to who among the rival claimants were competent to be trustees. One of the arguments was that because of certain actions of the Catholicos group they had become heretics or had gone out of the church or constituted a new church. That contention was held against. Whether the establishment of the Catholicate was invalid and if so what were the consequences of the same were not matters which had any relevance in the Samudayam suit. It cannot be said that these pleas ought to have been raised in the prior suit, considering

the frame of the suit. We, therefore, over-rule the contention that the challenge against the validity of the establishment of the Catholicate is barred by constructive res judicata.

49. On Points 4 to 6 we hold that the Catholicate established under Ext.A14 with powers as provided therein is valid and binding on the Malankara Church, that by such establishment Patriarch has not been deprived of his powers to ordain Metropolitans or consecrate Moroné or to exercise any other recognised spiritual power, though the power to ordain Metropolitans is subject to acceptance of the Malankara community represented by the Association and that by the establishment of the Catholicate spiritual power of the Patriarch has not been reduced to a vanishing point, though the Patriarch could not be regarded as having active spiritual supremacy.

50. Points 7 to 15:

(7) Whether, Patriarch Yakub III by his conduct after the decision of the Supreme Court has accepted the Catholicate established in 1912 by Abdul Messiah and the provisions of the Constitution of the Malankara Church governing the relationship between Patriarch and Catholicos and in the matter of appointing successor-Catholicos?

(8) Is the Malankara church essentially episcopal in character?

(9) Are the parish churches constituents of the Malankara church or are they autonomous units independent of the authority of the lawful episcopal hierarchy of the Malankara church?

(10) Whether the plea that the Constitution of 1934, as amended, is not binding on the entire Malankara Syrian Christian community including its dioceses, parishes and members is barred by the law of limitation and can be raised as valid defence to the suit?

(11) Is the Malankara Association a representative body that has the right to bind the whole community and all the churches by its deliberations and actions? Is the contrary contention of Patriarch's group barred by res-judicata by reason of the decision in the Samudaysm suit?

(12) Is the Constitution, Ext.A2 adopted by the Malankara Association in its meeting held on 26-12-1934 valid and binding on the entire Malankara church? Is the contention of the defendants that the said Constitution is not valid and binding on the entire Malankara church including its dioceses, parishes and institutions and members barred by res-judicata and constructive res-judicata by reason of the decision in the Samudayam suit?

(13) Whether, having regard to the resolutions passed in the Mulanthuruthy Synod allegedly empowering the Malankara Association with express power to alter/frame rules and regulations concerning the community and parishes, the adoption of the Constitution in 1934 as in any way invalid or void or destructive of the autonomy, if any, of the parish churches?

(14) Whether the defendants are estopped from challenging the amendments to the 1934 Constitution in view of their conduct after the decision of the Supreme Court?

(15) Is the Constitution valid and binding on the Malankara church, its dioceses, parishes, institutions and members? Are the amended versions of the Constitution Ext.A9 and A1 valid and binding? Are any of the provisions of Exts.A2 or A9 or A1 invalid for any reason?

51. Learned single Judge held that while the Constitution framed in 1934 with amendments introduced in 1951 and 1967 is binding on the Malankara church and common properties, it is not binding on parish churches and autonomous institutions in regard to administration and management unless there has been express surrender of autonomy by parish churches or other autonomous institutions, that it is not binding on Knanaya churches since they have not accepted it, that it is not binding on the plaintiff churches in O.S. No.1/79 and 5/79 since they have not accepted it, and that the relationship of Patriarch with Malankara church is not as envisaged in the Constitution.

52. We will first consider two main questions arising for consideration in regard to the above points. The first question is whether the Constitution was validly adopted so as to bind the entire community, Malankara Association and the parish churches. The second question is whether it is invalid for any of the reasons urged by Patriarch group. One of the issues framed in O.S.No.4 of 1979 (Issue No.2) is whether the Association is in existence. One fails to understand the rationale of the issue or the contention which gave rise to the issue. It was the Mulanthuruthy Synod which gave birth to the Association. The proceedings of the Mulanthuruthy Synod referred to the various measures to be taken for removing opposition and enhancing unity and peace and stressed the need for firmness in faith, removal of obstacles like disobedience, absence of people responsible to think over common affairs and lack of common funds. It indicated the measures to be taken in respect of the above and recommended a meeting of the community to be called and appropriate decisions to be arrived at. It further stated "In order to raise a common fund for the above purpose and also for advancing the education of our community and in order to enjoy the benefits thereof, it is quite necessary to consider the ways and means for the same. Since the funds belonging to the churches have become very little on account of the autocracy of the Metrans the only way is to raise the funds from the community without

very much strain. For this an organisation for the entire community is necessary and it should be named "The Syrian Christian Association". The Patron shall be our Patriarch and his successors and the ruling Metropolitan shall be its President." It prescribes the classes of members of the Association and states that each church joining the Association shall pay Rs.500/-. It further states "As the church has suffered injuries due to lack of authority to counter-act the autocratic powers of the prelates in Malayalam, it is essential to establish the above said Association; but as it is not feasible for all of them together to transact the business, a Chief Committee consisting of eight of the priests assembled here, and sixteen of the laymen of the first class with the ruling Metropolitan as President, shall be formed; the Committee shall have a Secretary on monthly remuneration and a Shroff having given security. The committee is entrusted with complete responsibility and management for every matter connected with common religious and communal affairs of the entire Syrian Community. As the church in general will derive all kinds of benefits by doing as abovesaid, it is necessary to appoint the said priests and laymen in this Synod itself, such persons being suitable for the purpose and interest in common affairs." Thereafter the Mulanthuruthy Synod proceeded to elect members of the Committee. It gave the Association power to remove members and join others or to confirm the former members themselves. The Synod passed a further resolution to the effect that for altering the existing rules relating to the administration of the property belonging to Church and to the Syrian community and for enacting new laws for the same, for examining and approving the accounts of the various churches, for confirming the Kaikars or Managers of the respective churches decided by the Yogam, for making all efforts to advance the education of the community, for repairing the churches which have fallen into disrepair, for building new churches and for erecting schools, the above said committee shall have full responsibility. The Synod further resolved that the Committee shall be responsible to collect and send the Ressisa due to the Patriarch, to collect the Kaimuthu and other income due to the ruling Metropolitan from the churches and in case it is not sufficient, to find out other sources and also to effect payment of salary to the Vicars according to the capacity of the parish and to pay the salary to the Secretary and others. The above decisions were taken as early as on 27-6-1876. It has not been brought to our notice that during the long history of the church for over a century there has been any effective challenge of the Mulanthuruthy Synod or the decisions thereof. It is our understanding that all the parties to the various litigations stand by legality of the Mulanthuruthy Synod and its deliberations and decisions. It is the Mulanthuruthy Synod which gave birth to the Malankara Association. Therefore the existence, factual or legal, of the Association cannot be successfully challenged.

53. The Patriarch group contended, and vehemently too, that the Constitution of the Malankara Sabha approved in 1934 is not a valid one, since the entire community and all parish churches were not represented at the meeting which adopted the Constitution. Whether the entire community or all the parish churches

were represented or not was a matter which was directly in issue in the Samudayam suit, for, in that suit the election of Metropolitan trustee and other trustees of the Malankara Sabha at that meeting was in challenge. When the case reached the Supreme Court (AIR 1959 S.C. 31) it was also argued that bringing into existence of the Constitution with some objectionable provisions amounted to setting up a new church or having gone out of the church and rendered Catholicos and his partisans heretics. On the latter question the Supreme Court held that the contention not having been urged in the pleadings could not be permitted to be raised. Dealing with the former question regarding the validity of the meeting, the Supreme Court observed in paragraph 41 of its judgment as follows:

"The M.D.Seminary meeting was convened by notices issued individually to all the Jacobite Syrian Christian Churches in Malabar. Three notices (Exts.59, 60 and 61) are alleged to have been sent under the same cover and at the same time. Ext.59 purports to be a notice issued by the defendant Basselios Catholicos. It is addressed to Vicars, Kykars and Parishioners. The meeting was fixed for Wednesday the 11th Dhanu 1101 (December 26, 1934). The first item of the agenda was to elect one as Malankara Metropolitan. Ext.60 is a notice emanating from three Vice-Presidents of the Malankara Jacobite Syrian Association named therein and addressed to the Vicars, Kykars and Parishioners. It referred to the Kalpana (meaning the notice) sent by Catholicos (Ext.59) and intimated that a meeting of the Malankara Jacobite Syrian Association would be held in the M.D. Seminary on the appointed day and asking them to elect a priest and a lay man from the Church as their representatives. Ext.61 is a notice by the Managing Committee of the Association addressed to each church. This also refers to the notice (Ext.59) issued by the Catholicos and fixes the meeting at the same time and place. Besides these individual notices, advertisements were issued in two leading daily newspapers, copies of which have been marked Exts.62 and 63. All that has been said in paragraph 18 of the plaint is that no meeting was held and that even if there was a meeting the same had not been held legally or according to the usages or convened by a competent person or after notice to all the churches according to custom. On a plain reading of that paragraph there can be no getting away from the fact that the only objection taken is that the meeting had not been convened by a competent person and that notice had not been given to all the churches. No other specific objection is taken to the validity of the notice."

The Supreme Court referred to the finding of the District Court that all the churches

had been duly served and the meeting was properly convened and held. The Supreme Court summarised the reasoning adopted by the District Judge as follows: "(i) A large majority of churches being in favour of the defendants, there could be no incentive on the part of the defendants to suppress the notices; (ii) The evidence of the plaintiff's witnesses clearly indicates that the partisans of the Patriarch would not have attended the meeting even if notices had been received from by them and indeed, according to them, notices from heretics would not be read in their churches at all; (iii) in point of fact two of the churches siding with the plaintiffs had returned the notices which were marked as Exts.150 and 151 and lastly (iv) that, apart from the individual notices to the churches, there were advertisements issued in two leading Malankara daily newspapers which have been marked Exts.62 ad 63." The Supreme Court proceeded to observe that "although the fact that the churches siding with the plaintiffs would not have attended the meeting does not appear to us to be sufficient reason for not giving notice to them, it nevertheless has a bearing on the question of the probability or otherwise of the suppression of notices from the churches siding with the plaintiffs. The public advertisements in newspapers also negative the alleged attempt at suppression of the notice. Further as the Mulanthuruthy resolutions embodied in Ex.F.O. which records the proceedings of the meeting at which the Malankara Association was constituted did not provide for any particular mode of service for meetings, it was enough that the ordinary rules adopted by voluntary associations and clubs had been followed, namely, that in the absence of any specific rules the mode of service determined by the Managing Committee should prevail." The Supreme Court referred to the reversing judgment of the High Court where it was held that Catholicos had no place in the Association or in the Managing Committee and could not be said to be competent to issue notice. The Supreme Court after referring to the finding of the High Court on the question as to whether notice had been issued and served on all the churches, to some of the exhibits and evidence of witnesses, D.W.29 and P.W.2 and others held: "Apart from Exts.59, 60 and 61 the advertisements in the newspapers evidenced by Exts.62 and 63 appear to us to be sufficient notice to all churches. There is no evidence at all that any particular church did not in fact know that a meeting was going to be held at the time and place hereinbefore mentioned. On the materials placed before us we feel satisfied that the notices were served on all the churches including those which sided with the plaintiffs and that there was no adequate ground for rejecting the finding of fact arrived at by the trial court on this question after a fair and full consideration of the evidence on record." In paragraph 43 the Supreme Court referred to the fact that the three notices were sent together and Ext.59 incorporated the agenda in full. It was thus that the validity of the meeting and the election of the appellant - first defendant as Malankara Metropolitan and ex-officio trustee as well as the election of other trustees were upheld. Plaintiff in the Samudayam suit was suing in a representative capacity as representing the entire community. The above findings of the Supreme Court are binding on the entire community. It must necessarily follow that the M.D. Seminary meeting at which

Constitution was approved was a competent and valid meeting to which representatives of all the parish churches had been invited.

54. There is clear evidence to show, and this is not controverted, that the notice of the meeting incorporated the agenda and one of the items in the agenda was "approval of the Constitution". Learned counsel representing the Patriarch group contended that draft of the Constitution had not been circulated among the parish churches along with the notice and therefore the churches had no opportunity to study the draft Constitution and brief their elected representatives to express views regarding draft Constitution as a whole or particular provisions thereof. From the Supreme Court judgment it is clear that three separate notices were issued to all the parishes for the 1934 meeting. Ext.A4 in these cases is a copy of the notice sent by the Catholicos. The notice stated that it had become necessary to consider several important matters relating to the community and the meeting of the parishes was being convened to be held on 26-12-1934 at 10.00 a.m. at the Kottayam M.D. Seminary. The notice called upon each of the parishes to elect one priest and two lay representatives to represent the parishes at the meeting and meet their expenses out of parish funds and required the representatives to attend the meeting with written authorisation letters and full authority to express views and exercise voting rights in regard to matters mentioned in the agenda attached to the notice. The agenda consisted of five items, namely, (i) election of Malankara Metropolitan, (ii) election of Melpattakars, (iii) election of members of the Managing Committee of the Association, (iv) adoption of the draft Constitution approved by the Managing Committee and (v) other matters, if any.

55. It is true, as pointed out by learned counsel appearing for the Patriarch group, that Ext.A4 does not specifically state that along with the notice copy of the draft Constitution also had been sent to the parishes. But having regard to common course of events it is difficult to accept that the authorities concerned did not forward to each parish copy of the draft Constitution along with the notice. Further, as pointed out by the Supreme Court in paragraph 16 of AIR 1959 S.C. 31, the draft Constitution was published as pamphlets. The Supreme Court further pointed out that the meeting also unanimously adopted the Constitution. The learned single judge has pointed out that the notice does not contain even a hint that any rules affecting the individual parish churches are included in the Constitution passed by the Managing Committee. Though this statement is literally correct, it is of no legal consequence since we have indicated that having regard to common course of events copy of the draft Constitution must necessarily have been sent to parish churches along with the notice and copies of the draft Constitution, as pointed out by the Supreme Court, had been published in the form of pamphlets before the meeting. All parishes had opportunity to consider the provisions of the draft Constitution and brief their representatives in regard to the stand they should take at the meeting.

56. It is argued on behalf of the Patriarch group that Ext.A208 proceedings of the 1934 meeting do not show that there was a clause by clause consideration of the Constitution at the meeting. Paragraphs 5 and 6 of Ext.A208 refer to proceedings relating to Constitution. Paragraph 5 mentions that the meeting approved the suggestion to nominate a Sub Committee consisting of the members of the Managing Committee, 34 representatives to be elected immediately to examine the draft Constitution clause by clause and suggest amendments, if any and 34 members were so elected to the Sub Committee. Paragraph 5 further states that the Sub Committee met for over two hours, considered the draft Constitution clause by clause and accepted certain amendments. Paragraph 6 states that the draft Constitution with the amendments suggested by the Sub Committee was placed before the general body of the representatives of parishes and the meeting approved the same. Paragraph 7 indicates that the President of the episcopal synod, the Catholicos, declared that Constitution can be enforced till the episcopal Synod meets and considers the same. There is evidence to show that the episcopal synod subsequently approved the Constitution as approved by the 1934 meeting. The learned single judge did not consider these aspects and did not record a specific finding as to whether the Constitution had been validly passed. On a consideration of the evidence and circumstances referred to above, we hold that the Constitution had been validly passed at the 1934 meeting at which three representatives of all the parishes in the Malankara Sabha had been invited. The Constitution is therefore valid and binding on the Association and the community as a whole.

57. Learned counsel Sri Padmanabhan placed strong reliance on Ext.B322 judgment of a Division Bench of this court in A.S.No.269 of 1960. The appeal arose out of the judgment of the District Court, Kottayam in O.S.No.164 of 1119 (filed in 1944). The suit related to a parish church of the Malankara Sabha or church, namely, St. George's Jacobite Syrian Christian Church, Puduppally and its properties. The suit was instituted soon after the Patriarch group lost the Samudayam suit in the District Court under S.72 of the Travancore Civil Procedure code (corresponding to S.92 of the Indian code) by seven parishioners of the church belonging to the Patriarch's party, against the priests, lay trustees and parishioners of the church of whom majority belonged to Catholicos group. There was a compromise which was not accepted by the court and consequently some defendants were transposed as plaintiffs. Plaintiffs alleged that the parish church and its properties were the common properties of all the parishioners with equal rights over the properties and the right of administration vested in the Yogam or general body though there was no written Constitution and that defendants 1 to 4 and others had committed breach of trust. The suit was to call upon defendants 1, 3 and 4 to render accounts and for their removal as trustees and for entrustment of the keys to plaintiffs and for settlement of a scheme. The contesting defendants contended that the church and its properties did not belong to parishioners but to the Metropolitan who appointed priests and trustees for management of the parish properties, though as a matter of grace he

was allowing them to elect trustees and persons to be ordained as priests and all of them derived authority from the Metropolitan and not from the parishioners and in truth it was the Metropolitan who administered the affairs of the church through priests and trustees. They denied the allegations regarding breach of trust and mismanagement and contended that the parish church was only a constituent unit of the Malankara church governed by the written Constitution which governed the parish church also. The trial court passed a preliminary decree in favour of the plaintiffs directing framing of a scheme without departing from the fundamentals of the Jacobite church, directing election of trustees by the parishioners according to the rules of the scheme, directing legal representatives of defendants 3 and 4 to render accounts and holding that management of the properties vested in the trustees.

58. Paragraph 8 of the judgment indicates that both parties accepted before the High Court that the church and its properties constitute a trust in favour of the parishioners of the church. The High Court held that the trust is not a private trust but a public trust. In paragraph 12, learned judges observed:

“We are by no means satisfied that the meeting had any authority to frame a Constitution for the suit church. That was a meeting of the Sabha, constituted as we have seen by the Mulanthuruthy Synod of 1876 a synod convened by Patriarch Peter III to curb the powers of the Metropolitans by vesting powers in the congregation; and it was for this purpose that the Sabha was constituted to represent the congregation. The suit church was admittedly founded long before that; and, admittedly, its properties and their management have all along vested in trustees elected by the parishioners although the appellants would have it that these trustees derive their authority not from their election by the parishioners but by reason of their acceptance by the Metropolitan, which, even according to them, invariably follows. It would thus appear that the suit church was an automanous unit so far as temporal matters are concerned, the power of management being vested in trustees elected by the parishioners. In order to vest the sabha with the power to frame a Constitution binding the suit church it must first be shown that this autonomy was surrendered to be Sabha. No evidence of any kind has been adduced to show that there was any such surrender, neither the proceedings of the Mulanthuruthy synod nor those of the M.D. Seminary meeting are in evidence in the case;

In paragraph 14 their Lordships indicated that whether the beneficiaries have the right to frame a Constitution for the trust or to empower some outside agency to do so seems open to question and in the absence of any rules of the foundation, that would appear to be a matter for the court. Their Lordship observed that it did not

appear that the Edavaka Yogam (parish general body) which sent three representatives to attend the M.D. Seminary meeting and to vote on their behalf authorised the meeting to frame a Constitution for the suit church or their representatives to vote in respect of such a Constitution. Their Lordships further observed "that no copy of the Constitution passed by the managing committee was sent to the suit church, and, in the context, the Bharanaghatana (Constitution) referred to could only have meant the Bharanaghatana of the Sabha which indeed Ext.P26 is. But that the constitution so framed would contain a chapter relating to the management of the individual churches of the faith could not have been within the contemplation of the Edavaka Yogam of the suit church when they sent their representatives to the M.D. Seminary meeting." Ultimately, in paragraph 17 their Lordships held that it has not been established that the temporalities of the suit church and the management of the trust is vested in the Metropolitan or that the rules in Ext.P26 are the rules of the trust.

59. There is no contention before us that the findings in the above judgment are res judicata for the purpose of these cases; there cannot be such a contention since that suit related to a single parish only and the other parishers or the Malankara Association or the entire community were not represented in the suit. According to the learned single Judge the reasoning in the judgment could be followed. We have taken the view that copy of the draft Constitution must necessarily have been circulated among all the parish churches and had been published in the form of pamphlets and all the parishes had every opportunity to consider the provisions of the draft Constitution and take appropriate stand in the 1934 meeting, and the meeting unanimously approved the draft Constitution scrutinised by the Sub Committee to which besides the members of the Managing Committee, 34 persons present at the meeting had been elected. With great respect we are unable to agree that the parishes had no opportunity to consider or formulate or present their views in regard to the provisions of the draft Constitution. They had every opportunity to do so since they sent representatives to the meeting and the representatives unanimously adopted the draft Constitution. It is only reasonable to conclude that the representatives had authority from their churches, namely, parish general bodies to approve the draft Constitution. It is therefore not open to any parish or any segment of the Malankara community to contend that the 1934 Constitution was not validly or lawfully adopted.

60. It is next contended that many of the provisions of the Constitution are invalid and void for several reasons. It urged (i) that the 1934 meeting had no right to frame a Constitution incorporating provisions controlling the temporal affairs of the parish churches since parish churches had not surrendered their temporal autonomy to the Association and such provisions are invalid. (ii) that ratification of the Constitution by each parish church is necessary and that has not taken place and on the other hand several parish churches had repudiated the Constitution. Hence several of the provisions which limit the authority of Parishes over temporalities of the parish churches are invalid and not binding on the parishes. (iii) that the Constitution

sought to destroy the tie between the Patriarch of Antioch and the Malankara Sabha and Patriarch has been sought to be reduced to a non-entity and the Catholicos has been made the head of the church and these provisions are against the canons and therefore void. (iv) Constitution contains provisions in relation to spiritual matters and a lay association or its general body or representative gathering of parishes has no authority to make rules regarding spiritual matters and such rules are void. (v) Constitution was amended in 1951 and again in 1967 in accordance with the amendatory provision in the Constitution, clause 126, that this clause itself is invalid and therefore the amendments have no legal effect. The 1951 amendments were approved in a meeting of which parish churches of the Patriarch group had no notice and the 1967 amendments have not been placed before the Association and were approved only by the Managing Committee which cannot be given the authority to amend (vi) church is not episcopal, that parish churches are congregational in nature and hence Malankara Metropolitan or the Association or representatives of churches have no authority to interfere with the temporal administration of the parish churches and the provisions in the Constitution which affect the temporalities of parish churches are illegal.

61. Articles 1,2,5 and 90 to 93 and 101 of 1934 Constitution are stated to be Articles which effect Patriarch's position. The Articles read as follows:

(1) Malankara church is a division of Orthodox Syrian Church. Primate of the Orthodox Syrian Church is Patriarch.

(2) Malankara church was founded by St. Thomas, the apostle and supremacy in the Orthodox Syrian Church of the East and the Primate of the Orthodox Syrian Church is with the Catholicos.

(5) The approved canon of this church is Hudaya Canon written by Bar Hebraeus (the same canon book as one printed in Paris in 1898).

(90) The throne of the Catholicos was re-established in the Orthodox Syrian church of the East which includes Malankara church in 1088 M.E. (1913) and this institution has been functioning ever since then in the Orthodox Syrian church of the East.

(91) Catholicos shall have the right to visit all churches in Malankara and that the expenses of such visits shall be borne by the respective parish churches.

(92) Malankara church shall recognise the Patriarch consecrated in co-operation with the episcopal Synod of which the Catholicos is the President and in accordance with the canons.

(93) Whenever Catholicos is to be consecrated, if there be Patriarch recognised as stated above, the Patriarch should be invited for the consecration and if the Patriarch arrives he shall as President of the Synod consecrate Catholicos with the co-operation of the Synod.

(101) No one shall have right to alter the faith of the Sabha. In case there is any dispute regarding matters of faith, episcopal synod is vested with power to decide the dispute.

62. The corresponding provisions in the amended Constitution are Articles 1,2,5,99 to 101, 108 and 114. There are a few changes brought about in some of the Articles. Amended article 100 reads as follows:

(100) Powers of the Catholicos include consecration of Prelates, presiding over the episcopal synod, declaring its decisions and implementing them, conducting administration as representative of the synod and consecrating holy morone.

Article 108 is a reproduction of Article 101 of the original Constitution amended to state that the final decision shall vest with the ecumenical synod.

63. It is argued that the Patriarchal supremacy and power has been reduced next to nothing. The Constitution describes the Patriarch as Primate of the Orthodox Syrian church and Catholicos as Primate of the Orthodox Syrian Church of the East. Powers of the Catholicos as mentioned in the Constitution flow from his position as Primate of the Orthodox Syrian Church of the East. Powers include consecration of prelates, presiding over the episcopal synod, declaring its decisions and implementing them, conducting administration as representative of the synod and consecrating holy morone. The provisions regarding a new Patriarch requiring recognition by the Malankara church and extending an invitation to the Patriarch to consecrate Catholicos and providing for the contingency of the absence of Patriarch are also objected to by the Patriarch group. In dealing with the Catholicate and connected questions we have held that the Catholicate established under Ext.A14 with powers as provided therein is valid and binding on the Malankara church, that by such establishment Patriarch has not been deprived of his power to ordain Metropolitan or consecrate morone or to exercise any other recognised spiritual power, though power to ordain Metropolitan is subject to acceptance of the Malankara community represented by the Association and that by the establishment of the Catholicate, spiritual power of the Patriarch has not been reduced to a vanishing point. We have also held that what Patriarch Abdul Messiah did was to revive or re-establish Catholicate of the East, whose special position and status is recognised in the rival versions of the canons. Both the rival versions confer on him power to consecrate Metropolitan and to consecrate morone. Ext.A13(a) Kalpana issued by Patriarch

Abdul Messiah confers on the Catholicos power to attend to spiritual functions such as ordaining Metropolitans, consecrating holy morone, attending to all other spiritual matters, in particular to reign over the Kandanad Diocese (that is, Malankara church). Patriarch also exhorted faithful to obey and love Catholicos. Ext.A13(a) confers on the Metropolitans sanction and authority to instal Catholicos which right is declared as irresistible by anyone. We cannot accept that by Exts.A13(a) and A14 it was intended altogether to sever the tie between the Patriarchate and Malankara church. The tie was certainly intended be retained though not with re-existing vigour. The net result of Exts.A13(a) and A14 is to recognise Catholicos of the East as head of the Malankara church for all practical purposes, maintainaing however the spiritual connection or bond of love with Patriarchate. In other words, the two Kalpanas or staticons of Patriarch Abdul Messiah recognised the high degree of autonomy in the Malankara church presided over by the Catholicos. The impugned provisions in the Constitution, it appears to us, are consistent with Exts.A13(a) and A14. We are not able to agree that the constitutional provisions amount to declaration of Malankara church as an autocephalous church or an independent church. Though learned counsel Sri.Padmanabhan strenuously argued that Patriarch Abdul Messiah had no power to bring about any such state of affairs, no provision of canon or other religious authority has been placed before us in support of the argument. As indicated by Patriarch Abdul Messiah in the two staticons, re-establishment of the Catholicate of the East became a prime necessity to end dissensions in the Malankara church and to keep the Malankara church under the umbrella of the World Orthodox Syrian church. As human's thirst for intellectual freedom grows, as one's ideas and vision about univese improve, as intellectual enquiry is directed towards problems of society and individual it is only natural that concept of centralisation weakens. This is true also of religious and spiritual affairs. The two Kalpanas of Patriarch Abdul Messiah came at a time when Malankara church was riven with dissensions and considerable section of Malankara christians turned against the authority of Patriarch and delegate of the Patriarchate. It was a great act of statesmanship on the part of Abdul Messiah that put out the fire of dissensions and established a degree of peace and reconciliation in the Malankara church. The constitutional provisions referred to above are only the logical outflow of re-establishment of the Catholicate. We find nothing illegal in the above provisions. The Malankara church, strong in faith, strong in numbers and strong in religious commitment definitely desired a say in the election and consecration of succeeding Patriarchs. Malankara church was not prepared to be ignored in the affiars of the World Orthodox Syrian church. It is this desire which led to provision of recognition of the Patriarch who is consecrated with the co-operation of the Malankara church. This provision also is unexceptional.

64. The next controversy relates to the question whether church is episcopal or congregational. Learned single judge held that the church in Malankara is not a purely episcopal church and "parish churches were considered to be rather independent units in the Malankara church". This finding is challenged by the Catholicos

group according to whom the church is purely episcopal. In Halsbury's Law of England, Fourth Edition, Vol.14 at page 284 rights of parishioners is dealt with thus:

"A parishioner has a right to enter his parish church and remain there for the purpose of participating in divine worship so long as there is accommodation available. Subject to certain rights he is entitled to a seat so long as there is a seat available and, although he must obey the reasonable directions of the church wardens, acting as the officers of the Bishop, as to which seat he shall occupy he cannot be prevented by them from entering and standing if no seat is available. A parishioner is entitled to receive the ministrations of the church and of the parish clergy in the parish church and other proper places and to be buried in the churchyard or burial ground of or belonging to the parish.

Subject to such special conditions as are imposed by law parishioners are entitled personally to attend and take part in the meetings, if any, of the vestry, the meetings of parishioners for the choosing of church wardens and all parochial church meetings".

"Ecclesiastical property" is defined at page 558 thus:

"Where property is appropriated for use only in connection with or for the benefit of a church, or is appropriated for use only by or for the benefit of officers or members of a church as such, or is held for a spiritual purpose in connection with a church, or is owned by any person in the capacity of a representative of a church it is called ecclesiastical property".

At page 560 is dealt with foundation and consecration of churches. "A building intended for use as a church or chapel may be erected by anyone and may, with the Bishop's consent, be used for divine service and the administration of sacraments but, subject to certain exceptions, the law does not take notice of such a building as a church or chapel of the church of England until it has been consecrated by the Bishop. The Bishop's right to give or withhold his sanction to the foundation of a church, and to consecrate or to refuse to consecrate a building erected for that purpose, is absolute. Where the building is consecrated as a church and the church so founded includes the cure of souls and the rights attached within the district assigned to it. It continues to exist in the eye of the law as a church, and the body corporate which has been endowed in respect of it remains in possession of the endowment even though the material building is destroyed".

65. Congregationalism has been explained by a Division Bench of the Travancore High Court in *John v. Rev. Thomas Williams* (1953 KLT 605). Congrega-

tionalist is described as one of the non-conformist protestant denominations. The court referred to Encyclopaedia Britannica and stated that congregationalism is the name given to that type of church organisation in which the autonomy of the local church or body of persons went to assemble in Christian fellowship is fundamental. It constitutes one of the three main types of ecclesiastical polity, the others being Episcopacy and Presbyterianism. It regards church authority as inherent in each local body of believers, as a miniature realisation of the whole church, which can itself have only an ideal corporate being on earth. But, while in practice it is religious democracy, in theory it claims to be the most immediate form of theocracy, God himself being regarded as ruling His people directly through Christ as Head of the church, whether Catholic or local. It springs from the religious principle that each body of believers in actual Church Fellowship must be free of all external human control, in order the more fully to obey the will of God as conveyed to conscience by His spirit. The essential features of congregationalism is the autonomy or independence of the individual church or congregations, though in matters in which the individual churches are interested as a whole and in order to enable the churches to effectively fulfil their responsibilities they may enter into unions. Both congregationalists and Presbyterians are opposed to Episcopacy, i.e. Government of the church by Bishops or in the theory of apostolic succession, that is, that Bishops are the successors of the apostles of Christ. In paragraph 81 the court indicated that fundamental principle of congregationalism is its doctrine of what is called the 'Priesthood of all believers', the doctrine that every Christian has the privilege and the right to function in all things pertaining to the priestly office. This doctrine implies the right of laymen to celebrate sacraments. In episcopal churches only ordained priests can celebrate sacraments. It is ordination that confers on a person the authority to celebrate sacraments. Viewed in the above light, these parish churches cannot at all be regarded as congregational.

66. Episcopatism is defined in the New English dictionary of Historical Principles - By Sir John Murray Vol.III as "theory of Church Polity which places the supreme authority in the hands of episcopal or pastoral orders". The same dictionary defines the word congregationalism as "A system of ecclesiastical polity which regards all legislative, disciplinary and judicial functions as vested in the individual church or local congregation of believers". Chambers Dictionary Vol.4 defines congregationalism as "the doctrine held by churches which put emphasis on the autonomy of the individual congregations". Congregationalism has for its sign-manual the words of Jesus "Where two or three are gathered together in my name, there am I in the midst of them".

67. There can be no doubt that Orthodox Syrian church (as also Malankara church) is episcopal in certain characteristics. According to Patriarch group the Orthodox Syrian church is founded by apostle St. Peter, said to be the most trusted and most leading among the disciples of Jesus Christ. According to Catholicos

group, the church never made any substantial distinction between apostle St. Peter and other apostles of Jesus Christ and Malankara church was founded by St. Thomas, one of the disciples of Jesus Christ. There is a controversy in this regard. Learned single judge has indicated that the tradition is that it was St. Thomas who originally propagated Christianity in Malankara. Ecclesiastical authority is solely in the hands of the episcopa. To that extent and viewed in this light, the church is episcopal. At the same time there is no authority for the proposition that the episcopa have complete temporal authority over parish churches. The Royal Court of Final Appeal of Travancore stated in Ext.B74 judgment: "Parties agree that head of Syrian Church in this country or its Metropolitan should be a properly ordained Bishop and that regarding temporal affairs acceptance of Malankara Metropolitan as such by the community is necessary". In paragraph 34 the court observed: "While the ecclesiastical supremacy of the Patriarch has all along been recognised, authority of Patriarch never extended to government of temporalities of the church". The court observed that Malankara Metropolitan of Syrian Jacobite church in Travancore should be a native of Malabar consecrated by Patriarch of Antioch or by his duly authorised delegate and accepted by the people as their Metropolitan to entitle him to spiritual and temporal government of local church. There is nothing to indicate in the judgment that the reference to "local church" meant individual parish churches. Reference was obviously to Malankara church as a whole. The Cochin Royal court of Appeal in Ext.B110 judgment dealt with a few individual churches in Cochin which form part of Malankara church. Plaintiffs took the stand that church was in the communication of Patriarch of Antioch, that Metropolitan had power to appoint and remove Vicars and Priests and elect Kaikars subject to confirmation of Metropolitan. First plaintiff who claimed to be Malankara Metropolitan sought declaration that the church and properties sought declaration that the church and properties were held by the Yogam and trust and were subject to his spiritual, temporal and ecclesiastical jurisdiction. Defendants denied, inter alia, the status of the plaintiff and contended that the church was independent of Patriarch who had no right to appoint Metropolitan and the Metropolitan had no authority in the churches. The Royal Court in its judgment recognised the tradition that St. Thomas apostle visited Malabar, that successive Metropolitans had episcopal authority over the parish churches, that the supremacy of Patriarch had been recognised, that the first plaintiff who was the accredited Bishop and duly accepted by the people has both spiritual and temporal jurisdiction over the churches and its properties. The court declared that the churches and properties were subject to spiritual, temporal and ecclesiastical jurisdiction of first plaintiff as Metropolitan. This judgment, of course, does not constitute res judicata. But the conclusion is certainly entitled to some weight.

68. The above of course does not mean that Metropolitan has been recognised to have jurisdiction over the day to day management of temporal affairs of parish churches.

69. The decisions of the Mulanthuruthy Synod accepted by all the parties concerned did require individual churches to execute consent deeds. This, it is argued, indicates that the individual parish churches are independent. We are not able to agree. That was only a method adopted to secure obedience and discipline in the Malankara church.

70. Mulanthuruthy Synod resolved that parishes shall keep three separate registers for baptismal, management and temporal affairs under the responsibility of Vicars. It resolved to raise a common fund for the purposes indicated therein and form a Syrian Christian Association and since it would not be feasible for all of them together to transact business to have a chief committee under the Presidentship of ruling Malankara Metropolitan entrusted with the complete responsibility and management of matters connected with common religious and communal affairs of the entire community. One of the resolutions contemplated altering existing rules relating to administration of church properties and enacting new laws for the same and for examining and approving accounts of various churches, for confirming karkars or managers of respective churches decided by the Parish General Bodies, for repairing the churches which have fallen, for building new churches etc. Yet another resolution required statement of accounts regarding income and expenditure of each church, list of assets belonging to each church and copies of certain registers and other records to be sent to the committee every year. It authorised Malankara Metropolitan to visit churches, examine balance sheets of the churches, confirm Karkars or managers and maintain diary for all the duties to be read out to the meeting of the committee. The above unanimous decisions of the Mulanthuruthy Synod representing the entire community and the parish churches would clearly militate against the contention that parish churches are congregational or otherwise independent. No doubt Mulanthuruthy resolutions spell out that parish churches have a degree of autonomy with certain supervisory powers being vested in the Managing Committee of the Association or Catholicos or the Malankara Metropolitan as the case may be.

71. It is argued by both sides that there are over a thousand parish churches and almost all the parish churches have their own Constitutions. Copies of a few of the Constitutions have been produced and marked as exhibits. Both sides placed reliance on the provisions of some of these Constitutions. We do not propose to enter into the details of the provisions of the Constitutions, for, in our opinion, they are not useful to determine this controversy. One uniform feature of the Constitutions is that the general body of each parish is declared to be the final authority in temporal matters. But even those Constitutions recognise some supervisory power in the Metropolitan in the matter of ordaining and recognising parish priests, confirming Karkars and the like. It is well recognised that administration of temporal affairs may involve violation of ecclesiastical laws and in such cases ecclesiastical tribunal will naturally have the disciplinary authority. Therefore to a certain extent and

In certain areas line of separation between temporal and ecclesiastical authority is very thin. We are not able to agree with the view taken by the learned single Judge that parish churches are independent churches. Malankara church is to an extent episcopal in character. A parish church receives consecration at the hands of the episcopa. A "church" not duly consecrated cannot be regarded as a church. It is clear that parish churches are constituent parts of Malankara church, but have a degree of autonomy and the administration of day to day affairs vests with the general body or the committee elected or nominated by the general body. Mulanthuruthy Synod recognised certain supervisory powers as vesting in Metropolitan or Antioch. This scheme has been generally followed in the impugned Constitution.

72. The learned single Judge came to the conclusion that the Jacobite church in Malankara is not a purely episcopal church and individual parish churches have independent status. Learned single Judge however has not held that the church is congregational. We have also indicated that Malankara church cannot be regarded as congregational in nature. We are in agreement with the view that Malankara church though it has some episcopal characteristics is not a purely episcopal church. But we are not able to agree that the individual parish churches are independent churches or churches with independent status. Learned single Judge has placed reliance on the decision in *Kunjamman Kurien Kathanar v. Ummamen Geevarghese Kathanar & others* (13 T.L.R. 101). The Travancore High Court considered the question whether an alleged pledge of church articles by Metropolitan Mar Athanasius was valid and held that the Metropolitan had no right to use temporality of the church for his own individual use and if he dealt with those articles for his own use the act amounted to misappropriation or conversion and the plaintiffs namely, representatives of the parishioners of the church and as such trustees of the assets of the church could sue for recovery of the articles. Learned judge considered that this decision is "to a certain extent is helpful to the defendants' contention that the parish church has got an individuality of its own as represented by its kaikars distinct from the church used in the wide sense of 'sabha'". We have no reason to disagree with this observation but this will not support the case of the Patriarch group that individual churches have fully independent status. The learned single judge has also relied on the decision of the Travancore High Court in *Titus Mar Thoma and others v. Mar Dionysius Metropolitan and others* (23 TLR 171). The case related to one of the parish churches under the control of Mar Mathew Athanasius who was Malankara Metropolitan consecrated by the Patriarch. The entire congregation apparently abandoned the old Jacobite faith and accepted the principles of the Reformed Faith and the congregation as well as Malankara Metropolitan repudiated the supremacy of Antioch. More than twenty five years later a suit was brought by the then head of the Malankara church for a declaration that he and his successors in office alone are entitled to appoint priests for the plaint church and for injunction restraining the head of the Reformed Faith from conducting services in the church and from appointing priests. Majority of the Full Bench following the decision in 18 TLR 83 held that whatever may have been the character of the original foundation, since for over

twenty five years original faith had been abandoned and an altered faith had been accepted and followed by the entire congregation, the church was invested with a trust in favour of the latter faith and therefore the suit failed. Learned single judge also referred to the decision of the Travancore High Court in *Geevarghese Kathanar and others v. Mar Dionysius Metropolitan and others* (26 TLR 148) and did not find it very helpful. We do not think that any of these decisions can help us to arrive at a conclusion that the parish churches of Malankara Sabha are independent or wholly autonomous churches.

73. The above decisions relied on the decision of the Madras High Court in *Bishop Mellur & others v. Vicar Apostolic and others* (ILR 2 Mad. 295). Madras High Court purported to place reliance on *Attorney General v. Bunce* (1868) 6 Equity 567. Learned single judge accepted that 6 Equity 567 is not an authority for the proposition that parishioners as a body could change the faith to one different from that of the founders and still remain the proper objects of charity and that it is well settled that once a charity is founded for the benefit of persons following a particular faith neither the authors of the charity nor the trustees as a body nor the entire body of the congregation can effect any change. In this connection learned single judge also referred to certain passages in Tudor on Charities (pages 131, 132 and 446) and *Attorney General v. Pearson* (36 E.R.135) and *Attorney General v. Kell* and *Attorney General v. Bovill* (referred to in Tudor on Charities at page 131). Learned single judge also referred to the impact of the Non-conformist Chapals Act, 1844 on English Law on the subject and indicated that the statutory presumption based on usage in church for twenty five years was invoked in 6 Equity 567. Learned single judge accepted the contention of the Catholicos group that the entire body of beneficiaries at any time cannot change the faith and that the Travancore and Madras cases misunderstood the English Common Law on the point. For the purpose of disposing of these appeals we find it unnecessary to go into the correctness of this controversy.

74. Learned single judge sought support from Ext.B323 and Ext.B322 for the proposition that parish churches are independent or have independent status. Ext.B323 is the judgment of the Travancore High Court in the case relating to management of St. George's Church, Puthuppally and its properties. The suit was filed by those in actual management of the church for accounts etc. First defendant contended that he was in management as per provisions of an agreement executed by him in favour of Patriarch and he was accountable only to the latter. The High Court held that Patriarch is not the absolute owner of the parish church and its properties but there was a trust of the properties in favour of the parishioners of the church. Learned single judge's understanding of the decision was that it proceeded "on the basis of the exclusive right of the parishioners in respect of the temporalities of the local church". We are, however, with great respect unable to agree with this understanding of the position. The question decided in the case was that the Patriarch was not the absolute

owner of the parish church and its properties were held in trust in favour of the parishioners. From this of course it can be argued that just as Patriarch is not the owner of the parish church and its properties, the Catholicos or the Malankara Metropolitan or the Diocesan Metropolitan is also not the owner of the parish church and its properties. But that is quite different from saying that the decision proceeds on the basis of the exclusive right of the parishioners in respect of the temporalities of the local church. The question of title to the properties does not really assume importance in the present cases. The challenge is more against provisions of the Constitution of Malankara Sabha and the amendments which allegedly make inroads into the right of management of parish properties and affairs by parishes. We do not understand Ext.B323 judgment as laying down the proposition that parishioners have absolute or uncontrolled right of management in respect of the temporalities of the parish church and that the right is free from any control or supervision by the Malankara Metropolitan or the Association which had come into existence. Ext.B322 is the decision of a Division Bench of the Kerala High Court in A.S.No.269 of 1960. We have already referred to the decision and expressed our view that the decision therein is not res judicata. The force of the reasoning of the decision if any has been taken away by the subsequent compromise between the parties accepting the 1934 Constitution.

75. Learned single Judge also drew support from the Mulanthuruthy Synod resolution requiring each parish to execute and register deed of covenant subjecting themselves to the mandate of See of Antioch. We have already indicated that it was only a method adopted to secure obedience and discipline in the Malankara church. We have no doubt that the parish churches are constituent parts of the Malankara church and enjoy a degree of autonomy and the administration of the day to day affairs vests in the Parish Assembly and committee elected by the Parish Assembly subject to supervisory powers of the Metropolitan and the provisions of the Constitution of the Malankara Sabha do not affect this position.

76. The original 1934 Constitution (Ext.A2) contains provisions regarding parish churches, general body and the like. It recognised general body with right of membership to Syrian Christians who are aged 18 years. It declared the right of such members to participate in general body meetings and exercise right to vote. It prescribed the subscription payable by each member. It contained provisions regarding powers of general body, periodicity of meetings of general body, introduction of resolutions, conduct of meetings, maintenance of accounts, constitution of managing committee etc. It declared that Kalkars along with Vicars are joint trustees of the properties. It required reports about the election and other proceedings should be sent to the Metropolitan for his approval. It recognised the power and jurisdiction of Metropolitan to appoint and transfer Vicars and other priests.

77. Many of the provisions were altered by later amendments. Our attention is invited to a few of these provisions as impinging on the autonomy of the

parishes, namely, Articles 23,40 and 41. Article 23 states that acquisition of immovable property for the parish church or sale or creation of any charge on any immovable property of parish church shall be in pursuance of the decision thereto made by the Parish Assembly and the written consent of the Diocesan Metropolitan and shall be done by the Vicar and the Kaikaran jointly. The Diocesan Metropolitan is obviously the representative of the Malankara Metropolitan. The Article does not take away power of the Parish Assembly in the matter of acquisition, transfer or sale of parish immovable property or creation of charge thereon. In fact, it re-affirms the power of the Parish Assembly in this behalf. The only restriction introduced is the requirement of written consent of the Diocesan Metropolitan. There is no objection to the provisions that an act has to be done by the Vicar and Kaikar jointly, for, it is accepted that ordinarily they are joint trustees. The objection seems to be about the provision requiring written consent of the Diocesan Metropolitan. It is difficult to believe that faithful in any religious community could have objection to the provision which requires consent of the Bishop. This appears to be only a reasonable limitation on the exercise of power, introduced in the best interests of the parish and the community as a whole.

78. Article 40 states that the Diocesan Metropolitan has authority to appoint, remove or transfer Vicar and other priests and with such removal or transfer the Vicar's stewardship will terminate. Article 41 states that if a priest belonging to one Diocese is to be transferred to another Diocese, such transfer shall be decided by the Metropolitans of the two Dioceses concerned in consultation with each other. Learned counsel for the Patriarch group has raised serious objection to this provision as impinging on the autonomy and will of parish churches. The position and status of Vicar has to be appreciated. Article 38 states that there shall be Vicar for every parish church and other priests, if any. Article 39 states that Vicar shall be joint-steward with the Kaikaran of the assets of the parish. The monies of the Parish shall be deposited in the joint names of the Vicar and the kaikaran or in the name of any one of them with the consent of each other. But the kaikaran may retain with him an amount as fixed by the Parish Managing Committee. The detailed provisions regarding Parish Assembly are found in Articles 6 to 23. Vicar has a pre-eminent position as President of the Assembly and other parish priests are Vice Presidents of the Assembly. Parish Assembly has to elect kaikaran, that is, lay steward, Secretary and members of the Managing Committee, which may remove them with the approval of the Diocesan Metropolitan and has to pass annual budget, appointment of auditor and consider report and adopt yearly account and decide on matters required for the parish (See Article 17). Article 9 confers on the Diocesan Metropolitan certain supervisory functions which are not challenged before us. Vicar is the President of the Parish committee and other priests, if any, shall be Vice Presidents. The kaikaran, under Article 32, shall be the joint steward along with the Vicar. It is the duty of the Vicar, under Art.43, to maintain various registers such as Baptism register, Marriage register, Burial register, Parish Assembly register, Confession register, Parish register and these registers shall be

open for the inspection of the Diocesan Metropolitan. Article 111 states that those desiring to be ordained shall on the recommendation of the Parish Assembly or on their own apply to the Diocesan Metropolitan and the latter after due enquiry if he feels no objection shall send them to the Malankara Metropolitan who according to convenience shall send them to the Theological Seminary of the community and if after required theological study, principal of the seminary certifies that they are fit for ordination, the Diocesan Metropolitan or the Malankara Metropolitan may at their discretion ordain them. It is the Vicar, under Article 120, who is to collect Resissa and send the same to the Catholics. There can be no controversy regarding the fact that Vicar as ecclesiastic is subject to the jurisdiction of the episcopa. Therefore the power granted to the Diocesan Metropolitan to appoint, remove or transfer Vicar cannot be regarded as objectionable or impinging on personality or autonomy of parish churches. We were told at the bar that ordinarily wishes of the parish are ascertained by the Diocesan Metropolitan before appointing or transferring a Vicar or priest. This is certainly a wholesome convention which has to be nurtured but on principle we are not able to agree that there is anything illegal in these provisions. We are unable to agree that any of the provisions of the Constitution as it originally stood or as amended is illegal or void.

79. Learned single Judge has emphasised in paragraph 213 and other paragraphs of the judgment that there is no evidence to indicate that local churches (parish churches) had surrendered their autonomy. With respect we are unable to agree that this is a correct approach. The Association in its original shape was formed at the Mularthuruthy Synod, a representative gathering of the episcopa, clergy and representatives of parish churches. It was their decision and determination to have such an Association to deal with various matters including common religious, communal and social affairs. The Constitution does not purport to be Constitution of the Association; on the other hand it is the Constitution of the Malankara Orthodox Syrian church or Sabha as it is called, framed at a representative gathering of all the parish churches, clergy, laity and episcopacy. The question whether parish churches had surrendered their autonomy to the Association does not arise as they are constituent parts of the Malankara church. The Constitution itself provides for the Association for the Malankara Arch Diocese named as Malankara Syrian Christian Association. The provisions in Article 70 to 77 deal with the general assembly of the Association and the Constitution thereof. Malankara Metropolitan shall be the President and other Metropolitans shall be Vice-Presidents of the Association. Articles 78 to 90 deal with the Association and the Managing Committee of which also Metropolitan is the President. Article 126 states that there shall be a Rule Committee appointed by the Association to make amendments to the Constitution as are necessary to suit the times and convenience and the President of the Rule Committee shall be a Prelate. Article 127 states that Rule Committee shall submit amendments to the Association Managing Committee and those passed by the Association Managing Committee shall be in force till altered by the Association and the episcopal synod. The

scheme of the Constitution would suggest that Association is a live and vibrant part of Malankara church. It will be more accurate to say that the Constitution is of the Malankara church and deals with the various aspects of the Association also. The Constitution has come into existence through the inter action and determination of all the parish churches through their elected representatives. If surrender is required as legal requirement, such surrender can be certainly implied by the participation and voting by representatives of parish churches at the assembly which approved the Constitution originally in 1934.

80. Shri Bhandare contended that Articles 126 and 127 are illegal. We do not find any such specific contention as having been taken in the pleading. The argument is that the Managing Committee or the Rule Committee are creatures of the Association and therefore they cannot have amendatory power. It is argued that the power vested in the Rule Committee, creature of the Managing Committee which itself is a creature of the Association, to make amendments to the constitution amounts to delegation and that is void. Reliance is placed on the decision of the Supreme Court in *Vasanth Maganbhai v. State of Bombay* (AIR 1961 S.C.4) where it is laid down that essential legislative function cannot be delegated. We do not think this principle would be applicable to the present case. Power is granted to the Rule Committee or the Metropolitan by the Constitution and not by the Association or the Managing Committee.

81. Learned counsel appearing for the Patriarch group would contend that since the Constitution has not been ratified by each parish church and some of the parish churches have repudiated the Constitution it is invalid. That ratification by parish church is necessary is only an assertion and it does not appear to have any legal foundation. Our attention is drawn to certain exhibits relating to Kothamangalam church where local committee has expressed its view that without further amendments some of the provisions of the Constitution cannot be implemented. We have already indicated that the Constitution has come into existence as a product of the will of the gathering of the representatives of the parish churches and as such is valid and binding on all the parish churches. The question of ratification by any parish church does not arise.

82. It is argued that the Constitution contains provision in regard to spiritual matters and the Association or its general body or the committees have no authority to make rules on such spiritual matters. It cannot be said that the Constitution has made provisions relating to spiritual matters outside the jurisdiction of the representatives and clergy of the Malankara church. There is no dispute that the 1934 meeting was presided over by the Malankara Metropolitan and Catholicos. The representative gathering included the episcopa, representatives of the clergy and the parishes. What they did was not to introduce any new religious rule or change any existing religious rule; they only codified the existing religious precepts and practices. Such,

are the provisions incorporated in Chapter I, Chapter V (relating to Catholicos and the power of Catholicos), Chapter VI (relating to Patriarch), Chapter VII (relating to episcopal synod), and Chapter VIII (relating to ordination). We have already pointed out that the Constitution is not the Constitution of the Association but of the Malankara church or Sabha. We find nothing offensive or illegal in these provisions. Assuming that the laity have no right to join in formulating such rules, it can be taken that such rules were made by the Catholicos, Metropolitans and representatives of the laity with the concurrence of Metropolitans and representative of parishes. Our attention has not been invited to any canon or other ecclesiastical law which stands in the way of such formulation of rules.

83. Thus the challenge against the Constitution fails. We hold that the Constitution of the Malankara Sabha as amended is binding on the entire Malankara Syrian Christian Church and community including all the dioceses, parishes and parishioners. The contrary finding of the learned single Judge is set aside. According to the Catholicos group, plea of invalidity and the non-binding nature of the Constitution is barred by limitation. The plea is raised by the Patriarch group in rebuttal of claims of the Catholicos group based on the Constitution. In our opinion the plea of limitation does not arise. The Catholicos group has also raised a contention that plea of Patriarch group regarding the Constitution is barred by *res judicata* and constructive *res judicata* by the decision of the Supreme Court. Supreme Court in the Samudayam suit did not purport to decide any such question. In the nature of the frame of the Samudayam suit we are not able to agree that the Patriarch group ought to have challenged the Constitution or the provisions thereof in the Samudayam suit. The plea of *res judicata* and constructive *res judicata* fails.

84. Patriarch group has raised the question whether Malankara Association is a representative body that has the right to bind the whole community and all its parish churches by its deliberations and actions. According to the Catholicos group this contention is barred by *res judicata* by reason of the decision in the Samudayam suit. We have indicated that the Malankara Association in its original form came into existence by reason of the decision of the Mulanthuruthy Synod presided over by the then Patriarch. The decision of the Mulanthuruthy Synod represented the will of Patriarch who represented the entire Orthodox Syrian church, the will of episcopa and the Malankara church, the clergy and the representatives of parish churches. There cannot be any doubt that the Association is a representative body which has the right to bind the Malankara church, the community, the parish and the parishioners by its deliberations and actions. This question never arose and could not have been arisen for decision in the Samudayam suit and therefore the plea is not barred by *res judicata*.

85. Learned counsel for Catholicos group has raised a contention that the Patriarch group is estopped from challenging the amendments to the 1934

Constitution and in particular clause 94 in view of the conduct after the decision of the Supreme Court. We find that this plea has no foundation in the pleadings and therefore we do not entertain the same.

86. There is also a contention that the later amendments to the Constitution are not valid and binding on the community and parish churches. The main pleadings are in O.S.No.4/79. On the question of amendments the only plea is seen in paragraph 12 of the written statement of the third defendant. Referring to 1934 Constitution, written statement states "It was abandoned and the Catholicos party adopted a fresh Constitution in 1951 at a time when they were declared as strangers to the Malankara church by the judgment of the Travancore High Court dated 8-8-1946 in A.S.No.1 of 1119 M.E. None of the churches of the Patriarch party who exclusively constituted the Malankara church at that time, were invited to nor did they participate in the meeting which adopted the Constitution in 1951. No meeting of the Malankara Association was ever held to accept this Constitution or to make amendments to it....." Seventh defendant in paragraph 19 of the written statement stated: "The Constitution which the plaintiffs rely is one that has been unilaterally adopted by the Catholicos party in 1951 when that party was declared by a competent court to be aliens to the Malankara church. The provisions of this constitution are quite different from that of 1934 Constitution. It was never the intention of the framers of this Constitution that it should bind the Patriarch party or churches within that fold. After 1951 or 1958 no meeting of the Malankara Association was held to adopt any Constitution or to amend any of its provisions". Same contentions are seen raised in the written statements of defendants 11,14,15,17 and 18 in that suit.

87. The above pleas proceed on the assumption that the 1934 Constitution was repealed and a new Constitution enacted in 1951. The assumption is incorrect. 1934 Constitution was amended in 1951. While according to Sri Nariman, amendments in 1951 were not specifically challenged by any party in pleadings and written statements do not provide any specific reason or basis for the challenge, according to Sri Padmanabhan, 1951 amendments are not binding since they were adopted at a time when the Travancore High Court had reversed the judgment of the District Court in the Samudayam suit and the 1951 amendments were not placed before the Association.

88. The developments subsequent to the decision of the Supreme Court in the Samudayam suit would clearly show that the Bishops and other persons of the erstwhile Patriarch group accepted the Constitution then in force and that could only be the 1934 Constitution as amended in 1951. While Patriarch accepted the Catholicos, the Catholicos accepted the Patriarch and the Bishops ordained by the Patriarch only subject to the provisions of the Constitution. Patriarch kept quiet for a period of four months and only thereafter made a belated attempt to question the same, while the Bishops are not seen to have questioned it at all. The Constitution

and the provisions thereof were not questioned till the present batch of suits. As we have indicated elsewhere, Bishops and other partisans of Patriarch group accepted the Constitution after 1958. 1967 amendments were formulated by the Rules Committee and approved by the Managing Committee as required by the provisions of the Constitution. The fact that they were not placed before the Association as such will not render the same illegal or not binding in view of Article 127 of the Constitution which indicates that approval by the Managing Committee is sufficient and that amendments shall be in force till altered by the Association and the episcopal synod. There is no case that the Association or the episcopal synod had altered the amendments. Therefore the 1967 amendments also have to stand.

89. In conclusion we hold as follows:

(a) 1934 Constitution is valid and binding on the Malankara Association, Community, Dioceses as well as parish churches and parishioners.

(b) Parish churches are not congregational or independent, but are constituent units of Malankara church; they have fair degree of autonomy subject to the supervisory powers vesting in the Managing Committee of the Malankara Association, Catholicos and the Malankara Metropolitan as the case may be. Administration of the day-to-day affairs of parish churches vests in parish assembly and elected committees of the parishes.

(c) Malankara church is not purely episcopal but has only some episcopal characteristics.

(d) Malankara Association is a representative body which has right to bind the Malankara church, the community, parishes and parishioners by its deliberations and actions.

90. Point No.16:-

"Is the authority for the election of the Diocesan Metropolitans of the Malankara Church the whole community as represented by the Malankara Association or the concerned parishes or dioceses?"

90-A. In view of our finding regarding the validity and binding nature of the Constitution, the point can be answered only on the basis of the provisions of the Constitution. We have earlier referred to the decisions of the Travancore and Cochin Courts of Appeal indicating that Malankara Metropolitan must be a person acceptable to the community as represented by the Association. Originally there was only one Metropolitan called the Metropolitan of the Kandanad Diocese. He was the Malankara Metropolitan. Art.97 of the Constitution says that the Malankara Metropolitan shall be

electèd to that office by the Association. This article only reflects the aforesaid decisions of competent courts. Article 113 of the Constitution states that if anyone is to be cosecrated as Bishop or Metropolitan, he shall be elected to such office by the Association and if such election is approved by the Episcopal Synod, Catholicos shall consecrate the candidate Canonically with the co-operation of the Synod. It appears to us that what applies to the Malankara, Metropolitan or even the Catholicos should with equal vigour apply to the election to the Diocesan Metropolitan. Authority for election is the entire community represented by the Malankara Association and not the concerned diocese. The Constitution contemplates Diocesan organisations such as Diocesan Assembly and Diocesan Council. But these organisations have not been given any authority to elect Diocesan Metropolitan. It is argued for the Patriarch group that there is some evidence to show that Diocesan Metropolitan were not always elected by the Association. That is neither here nor there. We are concerned only with the lawful method of election of candidate for ordination as Diocesan Metropolitan. The constitutional provision that the election is to be by the entire community represented by the Malankara Association shall necessarily bind the parties. We hold accordingly.

91. Point No.17:--

"Whether the administration of the properties and assets of the Malankara Church is vested in the Malankara Metropolitan for the time being? Is it held so by the Royal Courts of Appeal of Travancore and Cochin?"

91-A. Ext.B110 is the judgment of the Royal Court of Appeal in the case relating to Arthat parish churches in the erstwhile Cochin State. The suit did not relate to the properties of the Malankara Church, but related only to the properties of a few parish churches. The Cochin Royal Court of Appeal held that the properties were bound by trust in favour of those who worship God in the communion of Patriarch and under the spiritual, temporal and ecclesiastical jurisdiction of the Malankara Metropolitan. Ext.B74 is the judgment of the Travancore Royal Court of Final Appeal. The case related to the status of rival parties as Malankara Metropolitan and title to properties appertaining to Malankara Church. The court held, inter alia, that Malankara Metropolitan should be a native consecrated by the Patriarch or by duly authorised delegate and accepted by the people as their Malankara Metropolitan to entitle him to spiritual and temporal government of local church. Plaintiff's status as Malankara Metropolitan was upheld and decree in his favour was confirmed substantially. In narrating the history of the church we had occasion to refer to Cochin Award of 1840 which required the properties allotted to the Malankara Church to be administered by the Malankara Metropolitan, Kathanar trustee and lay trustee. The Constitution of the Malankara Church contains detailed provisions regarding management of the assets of the church. Administration vests in the Managing Committee which includes the Malankara Metropolitan as President, elected

Association Secretary, community trustees, eight priests and 16 lay men elected by the Association. Suffice to say that the administration vests in the Managing Committee in accordance with the provisions of the Constitution which have only improved upon the earlier system of administration. It cannot be said that the administration vests only in the Malankara Metropolitan for the time being. Point answered accordingly.

92. Point No. 18:--

"Has the Malankara Church become an autocephalous church?"

93. There is a dispute whether the Malankara Church has become an autocephalous church. Learned single Judge has considered this dispute in detail. In paragraph 273 of the judgment, learned Judge indicated that it is difficult to accept the plaintiffs' contention that Malankara Church was an autocephalous church but that even after establishment of the Catholicate general supervision of spiritual government still vested with the Patriarch. Learned Judge opined that the installation of Catholicate was at no time considered as leading to severance of Antiochan tie. In paragraph 276 of the judgment, learned Judge indicated that adoption of the Constitution did not amount to severing relationship with Antioch so as to bind the parish churches. It was argued before learned single Judge that the batch of suits before His Lordship and the contentions taken up therein would amount to declaration by the Catholicos-cum-Malankara Metropolitan and by the Malankara Association of status of autocephaly of the church. In paragraph 286 learned Judge indicated that the batch of suits would lead to the inference that a good number of members of the Malankara Church are 'now' for an autocephalous church and the mother church as well as some parish churches are opposing the same. In paragraph 288 learned Judge indicated that the court is not in a position to know who form the majority and who the minority in the Malankara Church. In paragraph 334 learned Judge held that plaintiffs and their adherents have 'now' de facto established an autocephalous church independent of the Antiochan See and such establishment cannot amount to heresy or deviation from essential fundamental tenet of orthodox faith, though it may be against the tradition of Malankara Church and by the establishment of such an autocephalous church they cannot be said to have drawn to their fold any of its members, institutions or parish churches who want to continue ties with the Antiochan See. Both sides are aggrieved by the above findings. While the Patriarch group contended that the Catholicos group in the Malankara Church never became an autocephalous church, the Catholicos group is aggrieved by the qualification introduced by the expression 'now' in the finding of learned single Judge.

94. Sri Nariman in the course of his arguments contended that assuming that Patriarchate of Antioch has supremacy over the Malankara Church it is only an inactive supremacy and the Patriarch is only a titular head and nothing more. We recall that Vattippanam case proceeded on the basis that Patriarch has some right of

supervision though the exact nature and extent of supervision was not delineated. We have already indicated that establishment of Catholicate with certain powers could not be said to have reduced the power of Patriarch to a vanishing point. In no earlier decision was there a specific finding that the power of Patriarch has been reduced to a vanishing point. As rightly pointed out by learned single Judge, in the Samudayam suit the Catholicos group took the stand that re-establishment of the Catholicate was intended to cement and perpetuate the connection with the Patriarch of Antioch. In the earlier decisions of the Royal Courts of Appeal of Travancore and Cochin the general power of supervision of Patriarch was reiterated.

95. The expression 'autocephalous' has been explained in the New English Dictionary on historical principles by Sir James Murray as "independent, having a head or chief of its own; independent of archi-episcopal or patriarchal jurisdiction". The learned single Judge has referred to certain observations by Alexander A. Bogolepov, Professor of Canon Law in St. Vladimir's Theological Seminary Crestwood, New York in his book "Toward an American Orthodox church". The term 'autocephalous' was used in early churches to describe Bishops who were independent of a superior authority. The term is now used to describe the independent Orthodox churches of Constantinople, Antioch, Alexandria, Jerusalem, Cyprus, Russia, Greece, Rumania, Yugoslavia, Bulgaria, Albania, Georgia and Poland. Professor Bogolepov observes that establishment of a new autocephalous church is one of the basic problems of the Orthodox Canon Law. The Ecumenical Councils of fourth to eighth centuries recognised independent churches of Rome, Constantinople, Alexandria, Antioch, Jerusalem and Cyprus. Subsequently the Russian church proclaimed independence from Constantinople. Later on churches of Greece, Serbia, Romania, Bulgaria and Albania became independent. After the first World War a few more churches were founded growing mainly out of Russian church, namely, Georgian, Polish and Czechoslovak churches. In the middle of the 20th century, the number of autocephalous Orthodox churches rose to fourteen. As an aftermath of the Second World War new Orthodox church groups desiring independence from mother church came into existence. Professor Bogolepov indicates the need for the regulation in the conditions and the manner in which new autocephalous Orthodox church can and should be established. The problem may not arise in the case of Roman Catholic Church. No new church can be organised from a part of the Roman Church according to which the true Christian church can exist only under the authority of the Pope of Rome, the Visible Head of the Church and Christ's Vicar on Earth. Protestants generally recognise the possibility of organising new communities. According to the Orthodox church, concept of church unity is one in plurality of sister churches, unity not being subordinate to a single head. Orthodox church of course does not recognise anyone to have been empowered by Christ to be the Vicar on earth and to have an indisputable authority over the whole of church. The spiritual unity of the sister churches consists in the unity of faith, church tradition, basic features of Canonical structure and divine services as well as in the recognition of only

that hierarchy which inherited its authority from the Apostles, that is from all the Apostles and not merely from St. Peter. Orthodox church, it is said, values the connection of its hierarchy with the Apostles, and through them with Christ Himself. In regard to administration of internal affairs, the sister churches enjoy right of self government and have independent ruling bodies of their own. The highest expressions of church's unity are said to be Ecumenical Councils. According to Professor Bogolepov local churches which are autocephalous, that is, meaning self governing and independent churches, have right to resolve all internal problems on its own authority, independently of all other churches and the right to appoint its own Bishops, among them the head of the church. The Professor draws a line of distinction between autocephalous churches and autonomous churches which are quite different from each other. Autocephalous church is self-governing and administratively independent church whereas autonomous church has restricted self-government and the latter is under the protection of an autocephalous church. An autonomous church cannot have its own independent head who can be elected by ecclesiastical bodies and the election becomes valid only when it is confirmed by the Highest Authority of the autocephalous church to which the autonomous church is connected. Ordinarily the head of an autocephalous church has the right to supervise the activities of autonomous church. According to Professor Bogolepov, establishment of an autocephalous church requires that local church must be sufficiently mature to organise its own ecclesiastical life and it must have a sufficient number of parishes and parishioners with the possibility of training new clergymen and a hierarchy canonically capable of making subsequent appointments of new bishops. It must also have the authority to appoint and consecrate a new bishop only when there are three ruling bishops of an ecclesiastical region. The region of the new local church must be in a state independent of that of its own mother church. According to the Professor, if a church meets all the canonical requirements for autocephalous status, then justice requires that its claim be recognised and that it be included in the number of autocephalous churches. According to him autocephaly would come into existence by an act of the mother church or recognition by the Patriarch of the church and also by proclamation of its independence by the new church. These, of course, are only the views of the Professor and are not shown to have Canonical sanction.

96. We have indicated that the re-establishment of the Catholicate and the Kalpanas of Patriarch Abdul Messiah did not result in severance of the tie between Malankara Church and the Throne of Antioch. In the earlier litigations courts repeatedly affirmed the Antiochean tie and supremacy, whatever be the nature and quality of the supremacy. Even in the last of the litigations the Catholicos group did not contend that Malankara Church or the Catholicos group in the Malankara Church had become autocephalous. In fact, the Catholicos group consistently resisted the contention of the Patriarch group that the Catholicos group in the Malankara Church had walked out of the Orthodox Syrian Church and this contention was rejected by the Supreme Court. In view of the consistent judicial decisions it is unnecessary to

refer to the other documents placed before us by both sides, including certain letters which passed between the Catholicos and Patriarch. The Patriarch remains the spiritual head of the Orthodox Syrian Church including the Malankara Church. The Constitution, the validity of which we have upheld, itself re-affirms the headship of the Patriarch of Antioch. Article 1 of the Constitution says that the Malankara Church is a division of the Orthodox Syrian Church, the Primate of which is Patriarch of Antioch. It is true that Article 2 says that Malankara Church is included in the Orthodox Syrian Church of the East and the Primate of which is Catholicos. Articles 1 and 2 are in no way inconsistent with each other. Article 101 states that Malankara Church shall recognise the Patriarch Canonically consecrated with the co-operation of Catholicos. Article 114 contemplates invitation being extended to the Patriarch for consecration of Catholicos and the Patriarch presiding over the Synod consecrating Catholicos. Various judicial dicta coupled with these Articles are sufficient to show that Malankara Church even after the coming into existence of the Constitution could not be said to have become autocephalous; nor has the Malankara Association declared Malankara Church to be autocephalous till date.

97. We are not able to agree with the view taken by learned single Judge that Catholicos group has 'now' de facto established an autocephalous church independent of the Antiochean See. The provisions of the Constitution, by which the Catholicos group swears negates the idea of Malankara Church or any group therein being autocephalous. It is not argued before us that the Catholicos has issued any formal declaration proclaiming Malankara Church or his faction in the church to be autocephalous or independent of the Patriarchate. Our attention has also not been invited to any decision of the Malankara Association taking any such stand. Learned single Judge was, with respect, in error in holding that Catholicos group has de facto established an autocephalous church independent of the Antiochean See. Malankara Church, as a whole, has also not become autocephalous.

98. Learned counsel Sri.Nariman placed reliance on certain developments which took place after the decision of the Supreme Court to support the contention that Malankara Church as a whole has become an autocephalous church. Obviously in the aftermath of the Supreme Court decision there was re-thinking in both the groups which led to the desire to establish peace and harmony in the church. Patriarch Yakub III issued Ext.A19(1) Kalpana dated 9-12-1958. The Kalpana refers to the dissensions and disputes in the Malankara Church for half a century, and expressed the desire of Patriarch to establish peace and unity in the church. Patriarch declared "to bring forth peace in the Malankara Church we hereby accept with pleasure Mar Basselious Geevarghese as Catholicos". This recognition was necessary in order to establish peace and unity in the church since the status of the then Catholicos was in serious dispute at the hands of the Patriarch group. The Catholicos by Ext.A20 issued a Kalpana dated 16-12-1958. In this Kalpana he described himself as Catholicos sitting in the Throne of St.Thomas. Catholicos expressed his desire to bring

peace in the church and to end the long-standing quarrels and discord. He expressed his happiness that "there is an end to the discord showing willingness to unite". He further declared "we for the sake of peace in the church are pleased to accept Moran Mar Ignatius Yakub III as Patriarch of Antioch subject to the Constitution" and that "we have also pleasure to accept the Metropolitans under him in Malankara subject to the provisions of the said Constitution." Recognition of the Patriarch by Catholicos was necessary since the status of the former had not been accepted by the latter since former's consecration was not made in co-operation with the Catholicos. The emphasis of the Patriarch as well as the Catholicos was on restoration of peace and unity. The over-whelming desire of both the groups for unity would indicate that they wanted to remain in a united church and not in two separate autocephalous churches. The subsequent developments will be discussed later. At this stage it is sufficient to say none of the subsequent developments go in support of the finding of learned single Judge on the formation of an autocephalous church in Malankara.

99. Can it be said that the various suits filed at the instance of the Catholicos group and the contentions taken by the Catholicos group in the suits filed by the other group would amount to declaration of autocephaly? Learned single Judge was inclined to answer the question positively. But with great respect, we are unable to agree with this view. The Catholicos by himself or in conjunction with other parties to the suits cannot have any authority to declare that either his group or the Malankara Church would be wholly independent of the Patriarch of Antioch. It is also not contended before us that all or at any rate majority of the parish churches at any time declared their intention to be part of an independent autocephalous church. It is also not argued before us that the Malankara Association either unanimously or by majority issued any such declaration, even assuming that such a declaration would make the Malankara Church or any faction in the Malankara Church totally independent of the Patriarchate. In these circumstances, we are unable to agree with the view taken by learned single Judge that 'now' the Catholicos group has defacto established an autocephalous church independent of the Antiochean See. The Malankara Church as a whole stands committed to the Constitution. Going by the judicial dicta, the Constitution and subsequent developments, Malankara Church remains a division of the Orthodox Syrian Church of which Patriarch is Primate. Undoubtedly the Catholicate of the East having been revived, the Catholicos for the time being is the Head of the Malankara Church but his headship is subject to Antiochean See. It is true that the Catholicos has practically all the powers of Patriarch. Nevertheless, Patriarch remains the head, though an inactive head, of the entire church inclusive of the Malankara Church. It is also true that Patriarch has ceased to have right of active supervision over Malankara Church. Nevertheless, he continues to be the head and as long as this relationship subsists the question of Malankara Church becoming autocephalous does not arise. Catholicos group also is not happy with the finding of learned single Judge that it has become de facto autocephalous. Sri Nariman who led the main arguments for the Catholicos group submitted that Catholicos group

never had such a contention and their contention has been that Malankara Church as a whole has become autocephalous. We have indicated that this contention cannot be accepted. We, therefore, hold that the Malankara Church is not an autocephalous church but is a part or division of the world Orthodox Syrian Church and set aside the finding of learned single Judge that the Catholicos group has now established an autocephalous church. We hold that while Patriarch of Antioch is the head of World Orthodox Syrian church Catholicos of the East who is subject to the Constitution is head of the Malankara Church and the relationship between Patriarchate and the Malankara Church is governed by the provisions of the Constitution.

100. Point No.19:--

"Are the defendants or others who defy the authority of the Catholicos-cum-Malankara Metropolitan and the Constitution of the Malankara Church entitled to function as Metropolitans, priests or deacons in the Malankara Church, its dioceses and parishes or to act as office-bearers in the Malankara Church, its dioceses, parishes and institutions?"

101. Learned Single Judge who held that the Catholicos group has now established an autocephalous church proceeded on the basis that there are actually two Malankara Churches, one owing loyalty to the Patriarch and the other to the Catholicos and that the defendants (Patriarch group) are entitled to function as Metropolitans, priests and deacons in the dioceses and parish churches where they are accepted. This finding is challenged by the Catholicos group. We have set aside the finding of learned single Judge that the Catholicos group in the Malankara Church has now established an autocephalous church. We have held that the Malankara Church is a part or division of the world Orthodox Syrian Church and that while Patriarch of Antioch is the head of the church, Catholicos of the East, subject to the Constitution, is the head of the Malankara Church and the relationship between the Patriarchate and the Malankara Church is governed by the provisions of the Constitution. The result is that there is only one Malankara Church and the entire community, Association, Bishops, priests and parishioners are subject to the provisions of the Constitution. It is unfortunate that dissensions arose in spite of the post-Supreme Court decision developments wherein Patriarch accepted the then Catholicos and the latter accepted the former subject to the provisions of the Constitution and the further efforts to unify the church. But the point as formulated really does not arise. Metropolitans, priests and deacons can function as long as they hold their status as such. By mere defiance of the authority of the Catholicos-cum-Malankara Metropolitan they cannot cease to be Metropolitans, priests and deacons. The controversies in the church are now being set at rest by this judgment, subject of course to any decision of the Supreme Court. The actions and re-actions of the members of the community, the episcopa and the clergy in the light of the

controversies preceding judgment shall not and cannot be used against them. We declare that the episcopa, clergy and the laity in the Malankara Church are bound by the provisions of the Constitution and entitled to rights adumbrated therein and subject to the discipline spelled out therein.

102. Point No.20:--

"Is administration of the properties and parish and dioceses/churches vested in the Malankara Metropolitan for the time being? Is it held so in the decisions of the Royal Courts of Cochin and Travancore?"

103. We have already referred to Ext.B74 and B110 judgments. Ext.B110 dealt with a few parish churches with the finding that they were subject to the spiritual, temporal and ecclesiastical jurisdiction of the Malankara Metropolitan. The suit related only to certain parish churches and neither the entire community nor all the parish churches were represented in the suit. Therefore, the finding cannot be regarded as res judicata. We have already referred to the decisions of the Mulanthuruthy Synod and the provisions of the Constitution having a bearing on this question. We have held that the community and the parishoners are bound by the provisions of the Constitution, even those provisions which recognise the supervisory jurisdiction of the Malankara Metropolitan and the organs of the Association over parish church properties. But it cannot be said that the administration of the properties of the parishes or parish church vests in the Malankara Metropolitan. Administration vests in the parish assemblies and the trustees for the time being subject of course to the provisions of the Constitution. Administration of the properties of the dioceses vests in the Diocesan Metropolitans subject to the provisions of the Constitution.

105. Point Nos. 21 and 22:--

"(21) Whether, in view of the conduct of the Patriarch and the former Patriarch group pursuant to the decision in AIR 1959 SC 31, they can claim that the Patriarch has authority to continue to exercise spiritual powers which existed before the establishment of the Catholicate?"

(22) Was there unification in the Malankara Church in 1958? Was the authority of the Catholicos-cum-Malankara Metropolitan and the binding nature of the then Constitution accepted by those who formerly were in the Patriarch group? Are not the latter estopped from contending otherwise?"

106. Plaint in OS 4/79 specifically alleges that the two groups in the Malankara Church settled their differences and became united Malankara Church but this contention is not accepted by the rival group. Learned single Judge considered the matter in paragraph 188 of the judgment and indicated that there were

attempts on both sides to have peace in the church and to bury the hatchet, but there was no acceptance as such of the Constitution of the Malankara Sabha and that the main differences were really not settled. The finding of learned single Judge that the Catholicos group had established an autocephalous church necessarily meant that there was no united church brought about after 1958. We have held against the finding of learned single Judge that the Catholicos group had established an autocephalous church. We will deal separately with the contention of the Patriarch group that the Catholicos and his group have become apostates. Prior to the decision of the Supreme Court in the Samudayam suit there were de facto two church groups, one owing loyalty to the Patriarch and the other to the Catholicos and each contending that the other had become heretic or alien to the Malankara Church or had gone out of the Malankara Church or had formed a new church. These contentions were over-ruled by the Supreme Court. With the decision of the Supreme Court it must necessarily follow that there was only one Malankara Church, whatever be the characteristics of the church.

107. Ext.B197 Kalpana dated 30-11-1957 issued by the Patriarch expressed desire to settle outstanding disputes and this was even before the Supreme Court judgment. The Patriarch stated therein that he was deeply interested in joining those who were divided and in strengthening the spiritual bond between Malankara and Antioch and that he was opening his heart for peace and unity. This desire which evidently was reciprocated by the rival group received impetus with the decision of the Supreme Court which proclaimed the unified nature of the church comprising of both the groups. It has to be remembered that in pursuance of the High Court judgment in the Samudayam suit, a meeting of parishioners (evidently loyal to Patriarch) was convened by Commissioner appointed by court and the Knanaya Metropolitan who then owed loyalty to the Patriarch group was elected Malankara Metropolitan. He got himself impleaded in the appeal before the Supreme Court. It is also in evidence that the latter Patriarch was, during the pendency of the Samudayam suit proceedings, a Rambhan in India attending to the litigation on the side of the Patriarch group.

108. Consistently with the desire to bring about peace and unity in the Malankara Church and understanding that disunity came about mainly on account of challenge by the Patriarch group of the Catholicos and the Catholicate re-established in 1913, the Patriarch issued Ext.A19 Kalpana dated 9-12-1958 in which after referring to the half a century of disputes and dissensions in the Malankara Church and expressing his own desire and longing for unity he stated that "Lord has been pleased to end dissensions through us" and "to bring forth peace in the Malankara Church we hereby accept with pleasure Mar Basselious Geevarghese as Catholicos." The Catholicos referred to is Catholicos of the Catholicos group. The Catholicos reciprocated with Ext.A20 Kalpana dated 16-12-1958. In the Kalpana he described himself as 'Holiness' and as being seated on the Throne of Apostle St. Thomas and

expressed his delight at the end of the discord and stated that "we, for the sake of peace in the church, are pleased to accept Moran Mar Ignatius Yacob III as Patriarch of Antioch subject to the Constitution passed by the Malankara Syrian Church Christian Association and now in force.....We have also pleasure to accept the Metropolitans under him (Patriarch) in Malankara subject to the provisions of the said Constitution." It is in evidence that at a formal function held before the altar in the M.D. Seminary at midnight the two Kalpanas were exchanged between the delegate of the Patriarch and the Catholicos. Ext.A21 and A22 are the relevant newspaper reports. The recognition of the Patriarch by the Catholicos was necessary because the election and ordination of the then Patriarch was made without reference to the Catholicos or the Malankara Church and, therefore, the latter did not accept the former as Patriarch.

109. It is relevant to note that during the pendency of the Samudayam suit, Patriarch ordained three Metropolitans owing loyalty to him as also three Metropolitans. These Metropolitans will be referred by us as Metropolitans of the Patriarch group. These Metropolitans sent Exts.A37 and A154 letters of submission dated 22-12-1958 to the Catholicos recognised by the Patriarch under Ext.A19. The author of Ext.A37 is none other than the rival Catholicos of the Patriarch group at present. These letters of submission expressed their joy at peace and unity restored in the Malankara Church. The authors of these letters promised to perform their future functions under the Catholicos and to follow the Canons, the Constitution in force and orders to be issued by the Catholicos. A meeting of the Malankara Association was held on 26-12-1958 Ext.A43(a) is a copy of the minutes. The meeting was attended by Bishops, clergy and laity of both the groups and was presided over by the Catholicos-cum-Malankara Metropolitan who had been recognised by the Patriarch under Ext.A19. Notice of the meeting had been issued by the Catholicos for election of new trustees of Malankara Sabha. It is seen that the Patriarch's delegate was also present by special invitation. At the meeting new trustees of the Malankara Sabha were elected. Ext.A44 newspaper report contains a group photograph of Metropolitans of both groups and the Patriarch's delegate as well as Knanaya Metropolitan. There was a meeting of Bishops of both the groups on 12-1-1959. Ext.A153 is a copy of the minutes. The meeting was attended by six Metropolitans of Catholicos group, three Metropolitans of Patriarch group as well as the Knanaya Metropolitan. The meeting resolved to unify various rival organisations, youth leagues, students organisations, women's organisation under one administration. Committees were formed to devise ways and means of unification. The meeting also decided that the Constitution of the Malankara Sabha shall be implemented where it was not implemented and to appoint a committee to study the particulars and report at the next meeting. It also decided on re-allotment of dioceses since the total number of Metropolitans of both groups exceeded the number of dioceses. Ext.A36 is a Memorandum dated 12-1-1959 submitted by 30 persons of Patriarch group including DW.2 to the Catholicos requesting him to inform the community about the Constitution of Malankara. They also pointed out that fresh

election should be held to the Managing Committee and suggested that the Managing Committee should have representatives of both the groups. This was necessary since the pre-existing committee did not have representative of Patriarch group. It is significant to note that the representatives of Knanaya group also signed the memorandum. This document refers to peace and unity brought about on 16-12-1958 but complained that the unity was not complete. It also states that the people at large of the community were unaware of the position of unity and that they must be convinced that the unity has been brought about subject to the Constitution.

110. Ext.A153(a) is the minutes of the Synod meeting held on 21-2-1959 attended by all the Metropolitans. The meeting approved Ext.A153(b) decision regarding re-allotment of diocese. It was resolved that copies of the Constitution should be sent to all parishioners with direction to obey the same. Till regular re-allotment of dioceses temporary allotment was made. Thereby all the three Metropolitans of the Patriarch group were allotted dioceses and the Knanaya Metropolitan continued to be in charge of the Knanaya diocese. The meeting also appointed a committee to suggest further modalities. This was followed by Ext.A38 Kalpana dated 25-2-1959 of the Catholicos regarding allotment of the dioceses as per Ext.A.153(a).

111. The above developments following the two Kalpanas, Exts.A19 and A20, would clearly show that the decision of the Patriarch and Catholicos to unify the church was accepted by the Malankara Association and the Bishops and others of both the groups. Various practical steps were taken to achieve the unity. This was only consistent with the decision of the Supreme Court that there was only one church and neither group had become heretic or alien or had gone out of the church or formed a new church.

112. It was only thereafter that the Patriarch wrote Ext.A23 letter to the Catholicos raising certain doubts and questions with reference to the contents of Ext.A20. He questioned the propriety of the Catholicos describing himself as 'His Holiness' and occupying the Throne of St.Thomas and recognition by the Catholicos of the Patriarch being made subject to the Constitution. He indicated that a copy of the Constitution had not been made available to him. This statement cannot be accepted since the evidence clearly shows that the then Patriarch was earlier a Rambhan attending to the previous litigation where the Constitution was very much in the picture. The objection to the description of the Catholicos as 'His Holiness' cannot be taken seriously. The description of the Catholicos as being seated on the Throne of St.Thomas is consistent with the tradition and belief in the Malankara Church. This also loses significance when we see that Ext.A4 notice of the 1934 meeting for approving the Constitution described the Catholicos in the same manner. It is not as if Patriarch raised his objection immediately following the receipt of Ext.A20. It is true Ext.A23 states that Patriarch was busy otherwise. But the fact that Patriarch took nearly four months to send Ext.A23 questioning certain statements in and raising

questions with reference to Ext.A20 is sufficient to show that Ext.A23 was a belated afterthought. It is difficult to believe that Ext.A19 was issued by the Patriarch and Ext.A20 by the Catholicos without any negotiations or prior meeting of minds if not directly, atleast indirectly. On 16-12-1958 the Patriarch's delegate was in Malankara. Undoubtedly the declaration by the Supreme Court that the Malankara Church was one and there were no two churches was re-informed and strengthened by Exts.A19 and A20 and the subsequent developments. It is clear that both sides showed an attitude of give and take. The Patriarch and the Catholicos mutually recognised each other. Catholicos could not have done so ignoring the Constitution of the Malankara Sabha. The aftermath of Exts.A19 and A20 is equally significant. Metropolitans and other persons in the Patriarch group accepted the Constitution. Ext.A24 is the reply to the Catholicos to Ext.A23(a) re-iterating his stand. Patriarch sent Ext.A157 reply to Ext.A24.

113. Ext.A25 is a copy of the notice dated 24-8-1959 for the meeting of the Malankara Association scheduled to be held on 16-9-1959. One of the items in the agenda was fixation of strength of the Managing Committee and election of members of the Committee. Each parish was directed to elect two lay representatives and one clergy representative and send them with letters of authorisation. Ext.46 series are certificates of posting which show that notices were sent to all the parishes. Ext.A47 series are the authorisation letters presented to the Association. Ext.A43(a) is minutes of the meeting. It shows that Bishops and other of both groups attended the meeting. Strength of the Managing Committee was fixed at 90 of which 74 were to be elected and 16 to be nominated by the Malankara Metropolitan. Committees were appointed for each diocese to suggest names of persons to be elected as Committee members. Names of 74 persons were unanimously accepted and they included persons of both the groups. It is seen that the elected members of the Managing Committee took oath in the form as seen in Ext.A30 to abide by the Constitution. Even on 16-6-1961 by Ext.A30 letter Patriarch indicated that he was reassured about peace by the conduct of the Catholicos. It shows that he had directed his delegate to keep away from all questions of disputes which may arise. As per the decision of the Managing Committee, Catholicos invited the Patriarch to come to Malankara. By Ext.A31(a) reply dated 27-10-1961 Patriarch suggested to the Catholicos that a Canonical invitation should be issued and that will be placed before the Patriarchal Synod. Such a Canonical invitation was sent as seen in Ext.A32. Catholicos also complained of the activities of Metropolitan Paulose Mar Philixinos (of the Patriarch group) who later became the rival Catholicos. He was suspended in 1960 and subsequently re-instated. Exts.A165, 166 and 167 show that this Bishop requested the Catholicos to make him Metropolitan in charge of a diocese and that was done and he promised to function as per the direction of the Catholicos. By Ext.A159 reply Patriarch declined to come down to Malankara immediately as it would only create further disturbances in Malankara. The visit was postponed.

114. Ext.A 43(c) is minutes of the meeting of the Association held on 12-5-1961 electing the successor to the then Catholicos who was very old. Ougen Mar Timothidus was elected as the successor. This was approved by the Synod on 21-6-1963. This was conveyed to the Patriarch by the Catholicos as per Ext.A33 to which Ext.A34 is the reply. Ext.A35 is the Episcopal Synod's letter of invitation to Patriarch for the installation of new Catholicos. This was signed by all the nine Metropolitans of both the groups. This was consistent with Article 114 of the Constitution which states that ordination of the Catholicos should be under the Presidentship of Patriarch, if he arrives in Malankara. Ext.A41 is the Kalpana dated 29-4-1964 issued by three Metropolitans (including one of the Patriarch group) regarding proposed installation of Catholicos on 28-5-1964. Ext.A161 is the letter of the Patriarch to the new Catholicos. The new Catholicos was installed by the Patriarch on 22-5-1964.

115. Ext.A48 series, A49 series, A52 series, A178, A179 and A189 would show that a new Managing Committee was elected composed of representatives of both the groups and the new members took oath affirming obedience to the Constitution. A new Catholicos was elected in 1970 at a meeting of the Association to which all the parishes were invited to send representatives as per the Constitution. Second plaintiff in OS 4/79 was elected as the successor-Catholicos as seen from Ext.A178 minutes of the meeting attended by both the groups. That election was challenged in OS 3/79. Learned single Judge dismissed the suit and no appeal has been filed against the dismissal. Exts.A5, A10, A11, A180 are the minutes of the subsequent meetings of the Managing Committee. Ext.A5 shows that the Managing Committee appointed Rules Committee in accordance with the Constitution to suggest amendments to the Constitution. The Rules Committee included persons of both the groups including DW2. Rules Committee prepared draft amendments and they were approved by the Managing Committee on 30-5-1966 and 14-4-1967 as seen in Ext.A11 series. The Synod meeting on 21-4-1962 in the presence of both the groups approved the rules as seen in Ext.A162(f).

116. All these developments show that unity in action was observed in a fair measure from 1958 to 1970. In spite of such fair measure of unity in action all differences had not been ironed out. In 1972 Patriarch nominated a delegate to Malankara Sabha. This act implied exercise of active spiritual supremacy by the Patriarch which in the circumstances was not palatable to Malankara Church. By Ext.A76 letter dated 16-2-1972 Catholicos and nine Metropolitans including those of the erstwhile Patriarch group requested the Patriarch not to send the delegate and indicating that the delegate cannot be received as it will lead to disturbance of peace and dissension. Nevertheless, the delegate arrived in Malankara and ordained priests and deacons. Subsequently Patriarch himself ordained defendants 1 to 3 in OS 4/79 as Bishops. Pending the suit the universal synod on 16-6-1975 the Catholicos and his followers were declared heretics and Patriarch ordained rival Catholicos in September, 1975.

117. Learned single Judge in paragraph 188 indicated that there were attempts at unity but the main differences which were apparently seen to be settled had not really been settled. Undoubtedly both the groups proceeded a long way along the path of unification and unification was achieved to a substantial degree. In view of the decision of the Supreme Court that there was only one Malankara Church and neither group had become heretic or alien or had gone out of the church or had formed a new church, practical steps of unification were inevitable. Disagreeing with great respect with learned single Judge, we hold that there was unification to a substantial degree in the Malankara Church in 1958 and subsequently. It is clear that during the period 1958 to 1972 authority of the Catholicos-cum-Malankara metropolitan and the binding nature of the Constitution was accepted by the erstwhile Patriarch group. We fail to see how after having accepted it they can go back on the same. They cannot do so.

118. While the Patriarch recognised the Catholicos, Catholicos recognised the Patriarch subject to the provisions of the Constitution and for a period of four months Patriarch did not purport to revoke his recognition of the Catholicos. It was only subsequently that he attempted to seek some clarifications. His complaint of not having been provided with a copy of the Constitution cannot have any significance in view of the fact, as we have indicated (See Ext.A26), that in his capacity as Rambhan in India he was attending to the litigation in the Samudayam suit and must have become very familiar with the Constitution and the provisions thereof. We have already held that through spiritual and ecclesiastical powers of the Patriarch have not vanished altogether it is no longer an active spiritual supremacy that he can exercise after the re-establishment of the Catholicate. This conclusion is further strengthened by the developments subsequent to the Supreme Court decision. Both the points are answered accordingly.

119. Point No.23:

"Do Simhasanam churches form independent units outside the Malankara Church? Has the Patriarch surrendered his jurisdiction over them to the Catholicos and the Malankara Church and have these churches accepted the altered position? Is the Patriarch competent to claim back any such jurisdiction by his unilateral act?"

120. There are a few Orthodox Syrian churches in Kerala which are popularly called Simhasanam churches, that is, throne churches being churches directly under the Throne of Antioch. OS 5/79 relates to one of those churches. The suit is filed by the Metropolitan of the Kottayam Diocese (of the Catholicos group) and priest appointed by him as Vicar of St. Mary's Church, Pampady against the lay steward, Secretary of the Parish General Assembly and other members of the Managing Committee of the plaint parish church seeking declaration that the

second plaintiff is entitled to function as duly appointed Vicar in the parish church without objection from defendants, to restrain the defendants by an order of injunction from obstructing the conduct of the religious worship and other activities by the second plaintiff and other incidental reliefs. Plaintiffs' case rests entirely on the developments after the Supreme Court decision unifying the church and the Patriarch's Kalpana dated 14-6-1964 Ext.A54 delegating his authority over these churches to Catholicos (of the Catholicos group). Therefore, the Metropolitan of the Kottayam Diocese claimed right to appoint Vicar and filed the suit for enforcement of the right. Defendants, inter alia, contend that the church was founded for the worship according to the faith of the Syrian Orthodox Church under the Patriarch, that the church is governed entirely by the provisions of its own Constitution approved by the Patriarch, that notwithstanding the so-called attempted unification of the church differences persisted and that the church continued to be under the administration of the Patriarch's delegate even after 1958 and the Catholicos-cum-Malankara Metropolitan or the Diocesan Metropolitan under him have no authority over the church. They also allege that delegation of powers by the Patriarch to the Catholicos had been subsequently withdrawn and transfer of the church from the jurisdiction of the Patriarch to that of the Catholicos would go against the object and foundation of the church. Only Vicars nominated by the parishioners could function in the church.

121. Learned Single Judge dealing with the matter in paragraphs 309 and 310 of the judgment held that Ext.A54 Kalpana amounted only to delegation of power by the Patriarch to the Catholicos as an interim arrangement till such time as the churches come in due course under the respective dioceses, that the transfer of title and ownership sought for by the Catholicos under Ext.B31 did not materialise, that the Patriarch by himself cannot transfer the churches under his jurisdiction to that of the Catholicos and the delegation of power has been withdrawn under Ext.B190. On this basis the suit was dismissed.

122. There is no dispute that even prior to 1935 some churches known as Simhasanam churches came into existence. One of them is the church involved in OS 5/79. The distinction of these churches is that at all times they have been directly under the Patriarch or Patriarch's delegate and never under the Malankara Metropolitan or Catholicos. In the aftermath of the Supreme Court decision Patriarch wrote Ext.A54 dated 14-6-1964 to the Catholicos stating that he was delegating his power over these churches to the Catholicos as an interim arrangement till such time as they come under the respective dioceses. Undoubtedly the intention of the Patriarch was to ensure that ultimately Simhasanam churches become part of the Malankara Church and distributed among the dioceses according to geographical location. Assuming that the delegation of power is rightful, it could certainly be withdrawn and the Patriarch did so under Ext.B190 dated 24-6-1975. It is interesting to note that in Ext.B31 reply of the Catholicos to Ext.A54 he is requested that the title and ownership of the churches should be transferred to Malankara Episcopal

Synod and as a matter of fact, that was not done. Ext.B160 is the certified copy of the deposition of DW.28 in OS 111/1113 of the Kottayam District Court. He was the then Catholicos of the Malankara Church. He deposed that notices of the 1934 meeting to frame the Constitution were not sent to the Simhasanam churches and that was because they were not under the Malankara Metropolitan or the Malankara Bishops and these churches had not been accepted by the Malankara Metropolitan as being part of the Malankara Church and they were not parish churches of Malankara Church. When dealing with the points formulated with reference to the 1934 Constitution and the Supreme Court decision, we mentioned that notices of the 1934 meeting had been issued to all parishes. That only means parishes forming constituent units of Malankara Church. As admitted by the then Catholicos in Ext.B160, these churches were not constituent units of Malankara Church. It was unnecessary for notices to be issued to them and notices were as a matter of fact, not issued to them. Our finding that the Constitution is binding on the Malankara Church, community, parishes and the parishioners cannot apply to Simhasanam churches. So much so, the Constitution or the subsequent amendments would not be binding on these churches. Undoubtedly the Patriarch desired to bring Simhasanam churches under the Malankara fold and took some preliminary steps in that behalf, but his desire did not fructify and culminate in their becoming part of Malankara Church. In these circumstances, we hold that the Simhasanam churches are not constituent units of Malankara Church and the Malankara Sabha has no sort of jurisdiction over them. They are to be treated as churches directly under the Patriarch. That being so these churches are entitled to manage their affairs under the Patriarch and the first plaintiff has no authority to appoint Vicar in the Simhasanam church involved in the suit and the second plaintiff appointed as Vicar cannot have any right. The dismissal of the suit OS 5/79 is correct.

123. Point No.24:--

"Are Knanaya churches part of Malankara Church and bound by the Constitution and jurisdiction of Catholicos-cum-Malankara Metropolitan and if so, to what extent?"

124. Nineteenth defendant in OS 4/79 is the Malankara Suriyani Knanaya Samudayam, that is, the Knanaya Community or church, represented by its trustee Fr.K.I. Abraham. Nineteenth defendant was not impleaded originally. Plaintiffs brought the suit in a representative capacity and sought to sue the original defendants 1 to 17 in their representative capacity under Order I Rule 8 of the C.P.C. Along with the plaint a list of 1064 churches was filed by the plaintiffs alleging that they are constituent units of Malankara Church. Churches shown as items 457 to 470, 472 to 488, 490 to 492 and 494 are Knanaya churches. Plaintiffs sought declaration about the episcopal nature of the Malankara Church and that no Metropolitan, priest or deacon unless validly ordained and appointed under the provisions of the Malankara Constitution can officiate in any of the churches and institutions and that any priest who refuse

to recognise the authority of the Catholicos-cum-Malankara Metropolitan and Malankara Sabha is not entitled to administer in any of the churches or institutions and other incidental reliefs. Even after the 19th defendant got himself impleaded, plaintiff was not amended seeking any relief against the 19th defendant, but it can be said that the declaratory reliefs would affect the 19th defendant also. After the impleadment of 19th defendant, second plaintiff who succeeded as Catholicos-cum-Malankara Metropolitan filed a rejoinder meeting the contentions of the 19th defendant. Besides raising certain common contentions, 19th defendant contended that Knanaya church is a separate Diocese under the Patriarch and independent and separate from the Malankara Church and is not bound by the discipline of the Malankara Church or the Constitution.

125. This controversy was considered by learned single Judge in paragraphs 311 and 312 of the judgment. Learned single Judge rejected the contentions of the 19th defendant that Knanaya Sabha is an absolutely independent community not forming part of the Malankara Sabha and that it has independent and separate diocese directly under the Patriarch though it is racially and ethnically distinct and separate group. Learned single Judge held that the Knanaya diocese and Knanaya churches are part of Malankara Church with autonomy in temporal matters. Consistent with the finding of learned single Judge that each diocese and each parish has right to opt to be under the Patriarch or the Catholicos-cum-Malankara Metropolitan, learned single Judge held that Knanaya Diocese and Knanaya churches can also decide in what set up they should function. Learned single Judge also held that the plaintiffs have no cause of action against the 19th defendant evidently on the basis of absence of necessary averments in the plaint. The denial of relief to the plaintiffs against 19th defendant is also challenged by the second plaintiff in AS 331/80. 19th defendant has filed cross-objection challenging the finding that Knanaya Sabha is part of Malankara Church.

126. The expression 'Knanaya' is evidently derived from the Syrian village Kana. A colony of Christians of Kana led by Bishop Joseph of Uraha settled in Cranganore in AD 345 under the guidance of Patriarch of Antioch. Knanaya community which was thus founded is admittedly distinct and separate racially and ethnically. It appears that there is no inter-marriage between Knanaya Christians and other Orthodox Syrian Christians. But this is not sufficient to show that Knanaya church is not part of Malankara Church. Koonan Cross Oath of AD 1634 which culminated in the over-throw of Portuguese domination over the church in Malankara was led by a Knanayite Christian. Exts. B106 and B155 books relate the history of the church. They state that Knanayites are part of Malankara Church. This is also indicated by Ext. 106 reply by Knanayites. It has to be remembered that all Knanaya churches were under a Knanaya Diocese headed by Knanaya Metropolitan without reference to geographical location of the churches. In the Karingasseri meeting of the Malankara Association (after the High Court declared the Catholicos group to be

heretics) directed to be called by the High Court, Knanayite churches were represented as seen from Ext.A92. In that meeting Mar Clemis who was the Knanaya Metropolitan was elected Malankara Metropolitan. In the post-Supreme Court decision era, Knanaya churches participated in the meetings of the Malankara Association held in 1959, 1962, 1965 and 1970 as could be seen from Exts.A47(h), A50(h) and A53(h). Leading members of the Knanaya community were elected to the Managing Committee. While discussing the contentions of parties regarding post-Supreme Court decision developments we have referred to the participation of the Knanaya Metropolitan in various meetings of the Association, Managing Committee and Synod. Therefore, we are inclined to agree with the view taken by learned single Judge that Knanaya diocese was not an independent diocese under the Patriarch but was part of Malankara Church. It must, therefore, follow that Knanaya diocese and churches are governed by the provisions of the Constitution of the Malankara Sabha.

127. But this cannot be an end of the matter. It is in evidence that even in 1912 Knanaya church adopted a Constitution and that was brought into force in 1918. A committee known as Knanaya committee was formed in 1882 and it was subsequently named as Knanaya Association. Ext.B37 is a copy of the Constitution. The Constitution refers to the existence of a separate Metropolitan for Knanaya church even at that time. The Constitution came into force as seen in Ext.B202. It is said that for the last over several decades Knanaya Metropolitans stood by the Patriarch of Antioch and successive Metropolitans had been ordained by the Patriarch. Ext.A153 is the minutes of the Episcopal Synod meeting held during the period 12-1-1959 to 7-6-1960. At page 22 there is a reference to the talks about the relationship between Malankara Church and the Knanaya community. It was decided to appoint a committee to submit a report about the same. These circumstances would clearly show that the Knanaya church or community, though part of the Malankara Church had an autonomous status of its own, well established and well recognised by all. That was why the Episcopal Synod wanted to consider specifically the mutual relationship between the Malankara Church and the Knanaya community. We have indicated that the Knanaya community is also governed by the provisions of the Constitution of the Malankara Sabha; but we cannot be unmindful of the admitted fact that the Knanaya community has a separate Association with a Constitution of its own. We cannot accept that the action of the Knanaya Metropolitan in the post-Supreme Court decision era amounted to disbandment of the Knanaya Association or the disintegration of the Knanaya Constitution. Such conduct cannot be interpreted to mean that Knanaya community gave up its own autonomy inside the Malankara Church. The acceptance of the Constitution by the Knanaya Metropolitan could only be subject to Knanaya Constitution. Of course, it is open to them to work out the details of the supervisory jurisdiction of Catholicos-cum-Malankara Metropolitan over the Knanaya diocese, Knanaya Metropolitan and Knanaya parish churches. Knanaya diocese as a matter of fact exists disregarding the geographical location of the Knanaya Parish churches. The functioning of the Knanaya parish

churches under the Knanaya Metropolitan and diocese continued inspite of the post-Supreme Court decision developments and acceptance of the Constitution of the Malankara Sabha. We are inclined to hold that Knanaya churches and their diocese and Metropolitan stand on a footing different from that of other parish churches under the Malankara Sabha. On the basis of our other findings it must follow that the Catholicos is the spiritual superior of Knanaya community and the Knanaya Metropolitan and the latter did function subject to the supervision and spiritual guidance of the former. In regard to the temporal matters, as long as the parties do not harmonise the provisions of the Knanaya Constitution and the Constitution of the Malankara Sabha, the latter can be implemented with reference to the Knanaya Diocese and parishes only subject to the terms of the Knanaya Constitution. The decision in OS 4/79 will be subject to this conclusion.

128. Point No. 25:

Are the churches established by and attached to the Evangelistic Association of the East situate in the territory of the Catholicate of the East liable to be administered under the Catholicos and the Metropolitans under him, namely, Malankara Episcopal hierarchy?

129. The Evangelistic Association of the East got itself impleaded as additional 18th defendant in O.S.No.4 of 1979 since churches shown as items 897 to 912 and 950 are under the Association. The Association has been impleaded as second defendant in O.S.No.2 of 1979 filed by the Catholicos and the successor-elect of the Catholicos. Item 1 in the plaint schedule in O.S.No.2 of 1979 is a high school called P.E.M. High School at Thiruvanchoor belonging to and run by the Evangelistic Association of the East. It is alleged in the plaint that a small section of the Evangelistic Association of the East is working against the established authority of the Catholicos. First defendant in O.S.2/79 was consecrated Metropolitan by the Patriarch though not elected by the Malankara Association. First defendant has not submitted himself to the Catholicos. Plaintiffs therefore contended that first defendant is not competent to function as Metropolitan in the Malankara church. Relief sought for is permanent injunction restraining him from officiating as Metropolitan in Malankara church or the institutions of the Evangelistic Association of the East and the churches and institutions scheduled to the plaint. Learned single judge has adverted to this controversy in paragraphs 300 to 308 referring to the Evangelistic Association of the East as Samajam and holding that Samajam is a society registered under the Societies Registration Act and is independent and cannot be considered to be constituent of the Malankara Sabha. Samajam has not relinquished its right in favour of Malankara Sabha or the Catholicos and the latter can have no jurisdiction over the former. Therefore plaintiffs have been denied relief against the Samajam or its institutions.

130. We will refer to the Evangelistic Association of the East as Samajam. Samajam is a religious, educational and philanthropic society owning churches, schools and orphanages. It was formed in 1924 with Headquarters at Perumbavoor. It framed a Constitution in 1933 which was registered in the Sub Registry, Perumbavoor in 1941. It was registered in Calicut under the Societies Registration Act. Ext.B118 is the Memorandum of Articles of Association and Ext.B125 is a copy of the Constitution and the certification of registration. The Constitution was amended in 1966 (See Ext.B121 pages 116 and 117) and again amended in 1972 (See Ext.B122 pages 60 and 61). Amendments were also duly registered. According to the plaintiffs, Samajam is a constituent branch of Malankara Sabha, which is denied by the Samajam. The claim of the plaintiffs has been rejected by the learned single Judge.

131. Clause 7 of the original Rules and Regulations of the Samajam stated that Patriarch shall be the supreme patron of the Association. Clause 8 stated that Metropolitans elected by the committee from among those who are accepted as Metropolitans by the supreme patron shall be patrons or vice patrons of the Association. Clause 9 stated that the management of the Association shall vest in a body called the Managing Committee, which shall consist of not less than nine members including the President, a Vice President, General Secretary, Treasurer and a Travelling Secretary to be elected annually at the annual general body meeting. Clause 10 stated that the supreme patrons and vice patrons shall have the right to be present and to take part in the proceedings of the meetings of the Managing Committee and when they are present they may be requested in the order of their rank to preside over the meeting. The rules show that subject to the decision of the general body all power vested in the Managing Committee. Clause 35 stated that priests desiring to work under the Association must have been ordained by the patrons or must have received their sanction. Clause 36 stated that churches built by or for the Association shall be consecrated by or with the sanction of the authorities mentioned in Ss. 7 and 8.

132. Ext.A84 is Memorandum of Association and Rules and Regulations as amended in 1966. Clause 7 was amended to state that Patriarch shall be the supreme patron, the Catholicos, His Holiness Moran Mar Bassalius Geevargese occupying the throne of Catholicate of the East shall be the patron with power to function within his jurisdiction. Clause 9 was amended incorporating clause (b) stating that the episcopal administration of the Association shall vest in the Catholicos or the episcopa or Metropolitan appointed by the Catholicos who shall be ex-officio member of the Association of the Managing Committee and shall preside over the meetings. The other provisions remain unchanged.

133. It is on the basis of the 1966 amendments that the Catholicos contends that the churches under the Samajam have become part of the Malankara

church subject to the episcopal control of the Catholicos. It is also contended that the Constitution of the Malankara Association is also binding on these churches which therefore fall under the supervision of the Malankara Sabha and the bodies envisaged in the Constitution. It is seen that on 22-7-1964 Managing Committee resolved to record its happiness upon the consecration of the Catholicos by the Patriarch. By another resolution Catholicos was requested to accept patronship of the Samajam and also to be its Metropolitan. Catholicos accepted the same. Ext.A86 is the reply sent by Patriarch accepting the Constitution of the Samajam and hoping that the activities of the Samajam would continue as before. Our attention is invited to the evidence of P.W.8 to the effect that the schools of the Samajam were not managed by the Malankara Sabha at any time.

134. The Constitution of the Samajam was again amended in 1972. The amended clause 7(a) states that Patriarch shall be the supreme patron of the Association and clause (b) states that Moran Mar Basselious Catholicos who has been accepted by the Patriarch shall be elected as the patron. The Vice Presidents shall be those elected by the Association from among Metropolitans consecrated by the supreme patron or the patron. The amended clause 9(b) states that the episcopal administration shall vest with the President of the Samajam if he happens to be Metropolitan and if not, on one of the Vice Presidents elected by the Association.

135. The evidence of P.W.8 shows that the churches and Samajam were not invited to Malankara Association meetings and the Samajam had no representative in the Managing Committee of the Malankara Association. Mar Julios a foreign national who was delegate of the Patriarch for a long period was the Metropolitan of the Samajam. If these churches were regarded as constituent part of Malankara Sabha, Mar Julios who was not a native of Malabar could not have been its Metropolitan. In these circumstances we are inclined to agree with the view taken by the learned single Judge that the churches belonging to the Association were not constituent parts of Malankara Sabha.

136. The object of the Samajam is to establish and maintain churches, schools and orphanages. In the original Rules and Regulations of the Association reference was made only to the supreme patron and the elected Metropolitans among those accepted by the supreme patron as Vice Patrons. Nothing was stated about the episcopal administration of the churches under the Samajam. In the light of the developments in the aftermath of the Supreme Court decision, the Samajam moved nearer the Catholicos. Rules were amended to declare the Catholicos accepted by the Patriarch to be the patron and to declare that the episcopal administration shall vest in the Catholicos or the episcopa or the Metropolitan appointed by the Catholicos. It is important to remember that even the 1966 amendment did not purport to make the churches under the Samajam as constituent churches of Malankara Sabha. The tie with the Catholicos as such was introduced but that tie was

severed by the 1972 amendment, by declaring that the episcopal administration shall be with the Metropolitan who happens to be the President of the Association or the elected Metropolitan. These churches are under the Samajam which is a society registered under the Societies Registration Act. The society is a legal entity though it is not a Corporation in the strict sense of the word. The society is bound to make its own rules and regulations under which management vests in the Managing Committee. As long as churches did not become constituent part of Malankara Sabha, the Catholicos or the Malankara Association or the Managing Committee cannot validly claim any jurisdiction over these churches. We have to remember that in 1964, by Ext.A86 Catholicos also accepted the Constitution and the Rules and Regulations of the Association or the Samajam and said that the activities must continue as before and he made no reference to the Constitution of the Malankara Sabha. It is no doubt true that for some time Catholicos accepted by the Patriarch under Ext.A19 was made the patron of the Association. But that was a voluntary act of the Association and not a consequence of the Association or the churches becoming part of the Malankara Sabha. In the two suits there is no pleading that Catholicos has right to exercise any jurisdiction over the churches in his capacity as patron. No issue has also been framed in this behalf. It is well known that a religious society may be independent of any church and its relationship with the church is that which it chooses. Our attention is not also invited to any decision of the Malankara church accepting the Samajam. Our attention is invited to page 26 of Ext.A149 where the churches are stated to be churches of the Samajam. It appears that the Catholicos and priest filed suit O.S. 78/74 in the Munsiff Court, Puthur regarding churches of the Samajam which are items 906, 907, 909, 910 etc. in the list appended to the plaint in O.S. 4/79. The suit challenged appointment of two priests by the Association. The suit was dismissed on 16-3-1976.

137. Ext.A162 at page 68 shows that on 1-3-67 Synod passed a resolution stating that the churches under the Samajam must come under the respective dioceses and appointing a committee to device the ways and means. On 18-3-1968 Synod passed resolution calling upon the Samajam and its Managing Committee to implement the earlier decision. P.W.8 admits that this was opposed by the Samajam. Synod on 27-8-1969 resolved to implement the decision amalgamating the churches in the respective dioceses and appointing Mar Philixinos as Metropolitan of these churches and directed them not to establish new churches. Amalgamation in respect of all dioceses was altered to a slight extent subsequently. It was thereafter that the Rules of the Association were amended in 1972.

138. We are inclined to agree with the view taken by the learned single Judge that these churches are not constituent parts of Malankara Sabha and as such not governed by the Constitution of the Malankara Sabha. The Catholicos can have claims if any, in regard to these churches only in accordance with the Constitution or Rules or Regulations of the Samajam. Since these churches are not part of

Malankara Sabha, Catholicos or the Metropolitans under him cannot have any jurisdiction over the churches of the Samajam. The denial of relief in O.S.6/79 and the denial of relief in O.S.No.4/79 against the 18th defendant is correct. We answer the point against the plaintiffs.

139. Point No.26:

Is St. Antony's church, Mangalore part of Malankara church and what reliefs, if any, are the plaintiffs entitled in regard to this church?

140. Item No.1040 in the list appended to plaint in O.S.No.4 of 1979 is St. Antony's Church belonging to St. Antony's Educational Society at Honavar. Neither the Society nor the church or the trustees of the church were impleaded in the suit. Vicar General of the Association has been impleaded as 17th defendant though not in a representative capacity. The society is a religious and charitable society registered under the Societies Registration Act and also under the Bombay Public Trust Act. Ext.B261 is the Memorandum and Articles of Association of the society which purports to be under the control and superintendence of the Patriarch. St. Antony's church was established and founded by the society for the use of the Orthodox Syrian Christians residing in Mangalore town. Ext.B262 is the judgment of the court of city civil judge in a batch of suits involving both factions of Orthodox Syrian church. The learned judge held that the Catholicos had no jurisdiction over the church. Ext.B261 also makes no reference to Catholicos. There is no evidence adduced to show that this church or society ever came under the jurisdiction of Malankara church. It cannot be said that the Constitution of Malankara Sabha would bind this church. Plaintiffs in OS4/79 certainly cannot secure any reliefs with reference to this church or the 17th defendant. Point answered accordingly.

141. Point No.27:

"Whether the appellants have become apostates by reason of the decision taken by the Universal Episcopal Synod held at Damascus on 16th June 1975 and subsequent days and the declaration following therefrom?"

142. Learned single Judge who considered this aspect in paragraphs 290 to 294 held that it cannot be said that Catholicos group had become heretic or had gone out of the church on account of the establishment of Catholicate and subsequent actions and that attempt to establish an autocephalous church will not amount to heresy or going out of the church, though it may be against the church tradition of ties with Antiochean See. With reference to the decisions of the Universal Episcopal Synod in June 1975 and the subsequent letter of the Patriarch, learned single Judge on the basis of his finding that the Catholicos group has established an autocephalous church held that the proceedings and orders are void. This finding is challenged by

the Patriarch group. According to the Catholicos group the grounds on which action was taken against the Catholicos and the Metropolitans were grounds urged in the Samudayam suit and rejected by the Supreme Court. According to them, Episcopal Synod in the Patriarchate of Antioch has no jurisdiction over them and in any event, it is the Episcopal Synod consisting of all the orthodox churches in the world which can take action and not the Antiochean Synod. On the merits also they rebut the decision of the Synod. These arguments are challenged by the Patriarch group who contended that if the finding of learned single Judge that Catholicos has established an autocephalous church falls they are part of Malankara Church and the Patriarch and the Holy Episcopal Synod in the Patriarchate has jurisdiction to take ecclesiastical disciplinary action against Catholicos and his Metropolitans.

143. This dispute has been raised in three of the suits, namely, OS Nos.4/79, 5/79 and 7/79 and in the Cross-Objections filed on behalf of the Patriarch group.

144. Ext.A80 dated 30-1-1974 is a copy of the charges levelled against the Catholicos by the Patriarch. The charges can be summarised as follows:

(i) The declaration of the Catholicos that he is seated on the Throne of St. Thomas is uncanonical as it is contrary to the basic truth that the only Throne in the Syrian Orthodox Church is that of St. Peter which is the seat of Patriarch.

(ii) The claim of the Catholicos to equal status with the Patriarch who is the supreme head of the church is uncanonical.

(iii) The conduct of the Catholicos in declaring the Malankara Church as an independent church with Catholicos of the East as its supreme head denounces the supremacy of the Patriarch.

(iv) The action of the Catholicos in describing the attachment of the Malankara Church with the Patriarch as "cordial relation" instead of "subordination" is wrong.

(v) The Catholicos refused to accept the Patriarchal delegate in India. Catholicos effected alterations in Amologia with a view to avoid the oath of subordination to the Patriarch.

(vi) The heretical two nature theory propounded by Pope Leo at the Council of Chalcedon is not repudiated in the ordinations.

(vii) The books taught in the Sunday Schools contain uncanonical and wrong teachings and fallacious historical facts.

(viii) Catholicos claimed territorial jurisdiction beyond what is specifically given to him by the Synod.

(ix) The Managing Committee of the Malankara Church presided over by the Catholicos passed a resolution that in case Patriarch ordains Metropolitans in Malankara Church, its connection with the Patriarch will be considered as having been voluntarily severed by the Patriarch and this is uncanonical.

(x) Catholicos's letter dated 7-8-1973 is most discourteous and impudent.

145 Catholicos sent Ext.A81 reply stating that the Patriarch has no jurisdiction to make charges and demand replies and the charges have been sent to the Malankara Episcopal synod which alone has jurisdiction.

146. It is seen from Ext.A82 that Malankara Synod met and repudiated the charges. Patriarch sent Ext.A202 letter dated 11-1-1975 to the Catholicos informing him about the decision to convene the Holy Synod of the Universal Syrian Orthodox Church on 6-6-1975 in view of the controversy regarding certain important questions which can be summarised as follows:

(a) Has St. Thomas established a Throne and whether spiritual grace emanates therefrom? If not, will the belief in the Throne or the emanation or spiritual grace amount to violation of fundamental tenet, doctrine and faith of the church entailing forfeiture of all rights in the church? If so, what is the relative position of the Throne of St. Peter vis-a-vis St. Thomas in the spiritual hierarchy of the church?

(b) Is the Malankara Church independent (autocephalous) of the Universal Syrian Orthodox Church?

(c) Has the Catholicos authority to use amended Amologia omitting the oath of allegiance to Patriarch?

(d) Is the repudiation of the heretical two nature theory propounded by Pope Leo at the Council of Chalcedon at the time of ordination an integral part of the faith and belief of the Holy Church?

(e) Whether the interdict of the Catholicos to the Parish churches not to receive or accept Metropolitans ordained by the Patriarch and his declaration challenging the authority of the Patriarch to ordain Metropolitans will amount to denial of authority, power and supremacy of the Patriarch?

148. In Ext.A220 letter Patriarch informed the Catholicos about the above decisions and purported to give him another opportunity to recant. Patriarch asked the Catholicos to inform him within ten days whether or not the Catholicos accepts and submits to the resolution of the Holy Synod. Catholicos was informed that in case of his failure to reply it will be presumed that he does not agree to the resolution. In such a case or if he repudiates the resolution he will have to be declared as apostate without further notice. He was also asked to show cause within ten days why such a declaration of apostasy should not be made.

149. The entire episode appears to be curious and bizarre. Patriarch specifically informed the Catholicos that the Holy Synod was being convened to find out the correct position in regard to several matters in controversy between the Patriarch and Catholicos. This letter Ext.A203 did not contain a whisper that any ecclesiastical disciplinary action was being contemplated. The earlier charges, Ext.A80 sent by the Patriarch to Catholicos also did not indicate that any such action was being contemplated. Proceedings of the Synod attached to Ext.A220 would show some matters dealt with in the charges were not considered by the Synod and some matters not referred to therein had been considered. There can be no doubt at all that the Synod proceeded on the basis that its deliberations were with a view to see whether ecclesiastical punishment should be imposed on the Catholicos and members of his group. The proceedings show that punishment and ex-communication were decided upon by the Holy Synod in the absence of the Catholicos and members of his group and without notice to them about the proposed action. Patriarch's group contends that it can be taken that Patriarch as supreme head of the church imposed the punishment and he did so only after issuing show cause notice Ext.A220 and that would suffice. We are not able to agree with this submission. Patriarch is not superior to the Holy Synod. It is the Holy Synod which is the final authority in ecclesiastical matters and matters of discipline. It was the Synod which decided to excommunicate Catholicos as also the other Metropolitans. Having decided upon the punishment, the Synod merely authorised the Patriarch to announce the decision. In other words, he was only to be a spokesman for the Synod and nothing more. Synod having decided upon imposing the punishment of excommunication, it is not possible to agree that the Patriarch after having issued show cause notice could have averted the imposition of punishment. For these reasons, we are satisfied that the decision of the Holy Synod which in effect and substance was only announced by the Patriarch is vitiated on account of violation of the principles of natural justice inasmuch as Catholicos or members of his group were not informed that the Synod was being convened or was required to consider the matters in controversy with a view to impose punishment. We, therefore, agree with the view taken by learned single Judge that the decision is void though our finding is rested on quite a different reason. In this view, it is unnecessary for us to consider the other arguments advanced regarding the authority of the Holy Synod, right of the Patriarch to impose ecclesiastical punishment and the like.

150. Point Nos.28 and 29:-

28. What is the consequence of the non-impleadment of the successor of the first plaintiff in O.S. No. 6 of 1979?

29. What is the consequence of the successor Catholicos not filing appeal against the decree in O.S.No. 6 of 1979?

151. O.S.No.6 of 1979 was filed by two plaintiffs, namely, Moran Mar Baselious Ougen I, the Catholicos of the East and Malankara Metropolitan and Thomas Mar Themothios, Metropolitan of the Malabar Diocese belonging to the Catholicos group. The suit was filed against two Metropolitans of the Patriarch group and the Missionary Metropolitan of the Evangelistic Association of the East. Plaintiffs claimed relief of declaration to the effect that defendants are not entitled to exercise any function as episcopa in spiritual, temporal or ecclesiastical matters in any parish church or institutions of the Malabar diocese and injunction restraining them from doing so. Learned single Judge dismissed the suit recording findings on various matters in controversy, and holding that plaintiffs had no title or right to item (8) church belonging to Evangelistic Association of the East, that the authority of the Metropolitan depends upon the acceptance by the Diocese and the parish churches and defendants are lawful Metropolitans of the Patriarch group. The appeal against this decree is A.S. 362 of 1980. First plaintiff, the then Catholicos died on 8-12-1975. His successor had been chosen earlier, but did not get himself impleaded, as supplemental plaintiff to continue the suit as successor-Catholicos. The appeal A.S.No.362 of 1980 was filed only by the second plaintiff. It is therefore argued by learned counsel Sri Padmanabhan and Sri Bhandare that so far as the Catholicos or the Catholicate is concerned the findings in the suit have become conclusive and the same cannot be challenged by the second plaintiff.

152. We find from the suit records that on 2-3-1976 the successor Catholicos filed an application in O.S.6/79 when it was pending before the court at Kottayam, to get himself impleaded as supplemental third plaintiff. Subsequently the suit was transferred to the District Court, Ernakulam and thereafter to the High Court. The application was neither numbered nor disposed of by any of the courts. It is seen that the application was filed within the period of limitation allowed for filing application for impleading legal representatives. The suit was disposed of without numbering or disposing of the application. If the application had been numbered it could only have been allowed since the applicant was the successor Catholicos and he had filed the application within time. When the question of non-impleadment of the successor Catholicos was urged before us at the stage of arguments, the successor Catholicos who filed the application before trial court filed C.M.P.No.584 of 1990 seeking to get himself impleaded as supplemental second appellant. The application is opposed by the second respondent who has filed counter affidavit. We

have heard learned counsel on both sides at great length on this matter. We are of opinion that C.M.P. No. 584 of 1990 should be allowed. We do so. The successor Catholicos was vigilant and had taken steps within the time allowed by law. It was the fault of the court that no order was passed on the application. No party shall be allowed to suffer on account of fault of the court. We therefore implead the petitioner in C.M.P. 584/90 as supplemental third plaintiff in O.S.6/79 and as supplemental second appellant in A.S.362/80. No supplemental pleadings or evidence are called for in this case. Therefore, the defect pointed out is cured.

153. Point No.30:

Whether the appeals have become barred by reason of res judicata on account of abatement of the appeal A.S.357/80 filed against the decree in O.S. 7/79 on account of the fact that the findings in O.S.7/79 have become final.

154. O.S.7/79 was filed by Catholicos and Metropolitans of the Catholicos group seeking declaration and injunction against a Metropolitan functioning in Malabar Diocese and ordained by the rival Catholicos. Learned single Judge on the basis of his finding that the Catholicos group has established an autocephalous church held that there can be two sets of Metropolitans, two sets of episcopa for the Malankara church and the truncated church under the Patriarch and they can function in the dioceses and parish churches accepting them. Accordingly the suit was dismissed. Plaintiffs challenged the decree in A.S.357/80. Defendant-respondent died pending appeal. None was impleaded as supplemental respondent and the appeal abated. It is therefore argued by Sri Bhandare for the Patriarch group that findings recorded by the learned single Judge in O.S.7/79 have become final and this will affect the other appeals where identical findings are in challenge and the appellate court cannot record conflicting findings in the remaining appeals and those appeals are barred by res judicata.

155. We have to examine the frame of the suit O.S.7/79 with reference to the frame of the leading suit in the batch of suits, namely, O.S.4/79. O.S.7/79 was filed by the Catholicos-cum-Malankara Metropolitan and a few Metropolitans of his group against the defendant therein seeking to challenge the status of the defendant as Metropolitan-in-charge of Malabar diocese ordained by the rival Catholicos. Of course challenge was based on various grounds which were common to some of the other suits. The primary contention of the plaintiffs was that the ordination of the defendant was not valid. Defendant in turn challenged the plaintiffs' ecclesiastical and legal status. The learned single Judge found that the two groups constitute two autocephalous churches and each set of episcopa can function in dioceses and parishes accepting them. Are we to take it this finding has become final? This finding is challenged in all appeals by both sides, Catholicos side contending that the

Malankara church as a whole has become autocephalous and not "now" as indicated by the learned single Judge and the Patriarch group contending that the Malankara church remains an undivided and integral part of the Orthodox Syrian church and the Catholicos group have become heretic and have been apostatised. If the findings recorded in O.S.7/79 have become final it would mean that apart from the Catholicos even the Patriarch group will be disabled from raising their contentions in the other appeals as otherwise there would be conflicting findings. This consequence is not accepted by the Patriarch group. It is worthy of notice that what was in question in O.S.7/79 was legality of the status of the defendant who was ordained by the rival Catholicos consecrated by the Patriarch. On the defendant's death it cannot be said that the cause of action survived. If the Catholicos of the Patriarch group ordains another Metropolitan and purports to put him in charge of Malabar diocese that may provide a fresh cause of action to the plaintiffs. O.S. 4/79 is a representative suit where all the concerned groups are parties and the findings therein and in the appeal therefrom will be binding on the entire Malankara church inclusive of the two groups, episcopa, clergy and the laity. Identity of parties in other suits is also lacking. In these circumstances, we are unable to agree that the abatement of A.S.No.357 of 1980 will bar the other appeals by res judicata or that findings in O.S.7/79 will be res judicata. Point answered accordingly.

156. Point No.31:

Whether Metropolitans ordained by the Patriarch and whose legal status is in challenge in these cases can function as Metropolitans in Malankara church?

157. In O.S.No.1 of 1979 plaintiffs seek, inter alia, to restrain the defendants who are connected with the Kothamangalam Mar Thoma Cheriapally from accepting the episcopal authority of Thomas Mar Dionysius or any other Metropolitan not appointed by the Catholicos. In O.S.No.2 of 1979 Catholicos-cum-Malankara Metropolitan and Metropolitans of Kottayam Diocese (of the Catholicos group) seek declaration that the first defendant, Metropolitan of the Evangelistic Association of East, is not entitled to any episcopal right, spiritual, temporal or ecclesiastical right in the Malankara church or its dioceses etc. and injunction restraining him from officiating as Metropolitan and interfering with the administration of Malankara church or its dioceses etc. In O.S.No.4 of 1979 filed by Catholicos-cum-Malankara Metropolitan and his elected successor, defendants 1 to 3, Metropolitans ordained by the Patriarch are sought to be restrained from functioning as such and from ordaining priests, deacons etc. O.S.No.6 of 1979 was filed by Catholicos-cum-Malankara Metropolitan and Metropolitan of Malabar diocese belonging to the Catholicos group against the Metropolitan of the Evangelistic Association of the East and two other Metropolitans ordained by the Patriarch for declaration that defendants are not entitled to exercise any function as priest, episcopa or Metropolitan in matters temporal, spiritual and

ecclesiastical in any parish church or institution of the Malabar diocese in the Malankara church and an injunction restraining them from doing so. O.S.No.7 of 1979 was filed by Catholicos-cum-Malankara Metropolitan and five other Metropolitans of the Catholicos group against Samuel Mar Phelixinos ordained as Metropolitan and installed as Catholicos by the Patriarch for a declaration that defendant is not entitled to any legal status or function as such in Malankara church. O.S.No.8 of 1979 was filed by Catholicos-cum-Malankara Metropolitan and his elected successor against another Metropolitan ordained by the Patriarch for similar relief.

158. O.S.No.3 of 1979 was filed by two members of the Malankara community under Order 1 Rule 8 C.P.C. on behalf of the members of the community against Catholicos-cum-Malankara Metropolitan (the President of the Malankara Orthodox Syrian Christian Association), Metropolitan of the Catholicos group of the diocese outside Kerala and two co-trustees of the Malankara Association seeking declaration that the alleged election of the first defendant as successor to the Catholicos was invalid and for consequential injunction. This suit was dismissed and the dismissal has not been challenged by way of appeal. Therefore the challenge against the status of the first defendant elected as Catholicos to succeed the second defendant fails and this decision is binding on the entire community.

159. The question which therefore arises for consideration is whether Metropolitans and the Catholicos ordained by the Patriarch can legally function as such. Learned single Judge held that rival sets of Catholicos and Metropolitans can function in the dioceses and parish churches which accept them respectively; this conclusion was based on the finding that the Catholicos group having established an autocephalous church, in the eyes of law they are two distinct and separate churches and it is open to the dioceses and parishes to opt to be part of one or the other of the churches. This conclusion cannot be sustained in view of our finding that learned single Judge was in error in holding that Catholicos group has established an autocephalous church or that there are two churches. We have held that there is only one church, namely, Malankara church and neither group has gone out of the church. We have also found that the apostatisation of the Catholicos or his group is void. In answering points 4 to 6 we have held that Catholicate established under Ext.A14 with powers as provided therein is valid and binding on the Malankara church, that by such establishment Patriarch has not been deprived of his powers to ordain Metropolitans or consecrate Morons or to exercise any other recognised spiritual power, though the power to ordain Metropolitans is subject to acceptance of the Malankara community represented by the association and that by the establishment of the Catholicate spiritual power of the Patriarch has not been reduced to a vanishing point and that the Patriarch could not be regarded as having active spiritual supremacy. In other words, theoretically Patriarch has power to ordain Metropolitans or even a Catholicos. The manner in which Catholicos is to be selected and ordained is laid down in Ext.A14. Sanction and authority to instal Catholicos is vested in the Metropolitans of

23/11/79
cf.

the Malankara church. Ordination of Metropolitans has to be accepted by the community as represented by the Malankara Association. It is not argued before us that the Catholicos-cum-Malankara Metropolitan and Metropolitans of the Catholicos group have been ordained or installed in a manner different from what is indicated above. It is not argued before us that Metropolitans of the Patriarch group whose status is challenged before us have been accepted by the community as represented by the Malankara Association. Therefore such Metropolitans of the Patriarch group cannot be regarded as lawfully ordained Metropolitans in the eyes of law. Even if those Metropolitans purport to select a Catholicos of their own, such selection or installation cannot be regarded as lawful in the eyes of law. In other words, such selections and ordinations cannot bind the members of the Malankara church, the Malankara Association, the dioceses and parish churches which form part of Malankara church. They cannot function in such capacity in Malankara church or its dioceses or parishes. This conclusion will not of course apply to Metropolitans ordained by the Patriarch for the Evangelistic Association of the East in view of our answer on point No. 25. Point answered accordingly.

160. O.S.No.1/79-A.S.No.359 of 1980:

This suit relates to Kothamangalam Mar Thoma Cheriapally. The suit was filed by a few parishioners owing loyalty to the Catholicos group against priests and Managing Committee members of the church. The church falls within the jurisdiction of Angamaly diocese. Plaintiffs owe allegiance to the Catholicos-cum-Malankara Metropolitan and the Angamaly Diocese and Metropolitan Philipose Mar Theophilus. In 1973 Patriarch ordained Mar Thomas Dionysipous as Metropolitan of the Angamaly Diocese. Plaintiffs averred that defendants who claimed to be loyal to Patriarch disobeyed the decisions and directions of the Malankara church represented by the Catholicos-cum-Malankara Metropolitan and Diocesan Metropolitan of the Catholicos group as reflected in various purported decisions of the parish assembly and the Managing Committee referred to in the plaint. The decisions go against the episcopal status and rights of the episcopa of the Catholicos group in regard to plaint church and the right of episcopa to appoint Vicars and Priests and control religious worship and administration. Plaintiffs therefore sought declaration that such decisions in so far as they affect episcopal right of the episcopa of the Catholicos group over the plaint church and their right to appoint vicar and priests and control religious worship and administration of the plaint church are illegal and do not bind the church and injunction restraining the defendants from denying episcopal authority or from accepting the episcopal authority of the Metropolitan of the rival group etc.

161. Learned single Judge dismissed the suit mainly on the basis of the conclusion that there are in effect two independent churches and it is open to each diocese and parish to opt to accept episcopa of either group and the 1934 Constitution is binding only on those churches which specifically accept the same and

other connected findings. We have reversed these findings holding that there is only one church, that the Constitution is binding on the Malankara church and the dioceses and parish churches therein, that Metropolitans ordained by the Patriarch and not accepted by the Malankara community as represented by the Malankara Association cannot function as such. It must necessarily follow that the plaintiff church and the vicars, priests and the parishioners are bound by the Constitution of Malankara Sabha and have to function under the episcopal authority of the Catholicos-cum-Malankara Metropolitan and the Diocesan Metropolitan of the Catholicos group. Plaintiffs are therefore entitled to a decree.

162. O.S.No.2 of 1979 – A.S.No.350 of 1980 and Cross-objection.

This suit was filed by Catholicos-cum-Malankara Metropolitan and Metropolitan of the Kottayam diocese of Catholicos group against the Metropolitan of Evangelistic Association of the East. We have already held under point No.25 that Evangelistic Association is not part of Malankara church. It must follow that defendant is not under the jurisdiction of the Catholicos-cum-Malankara Metropolitan or Metropolitan of the Catholicos group of Kottayam diocese. The dismissal of the suit therefore stands.

163. O.S.No.4 of 1979 – A.S.No.331 of 1980 and Cross-objection.

This is the comprehensive representative suit filed by the Catholicos-cum-Malankara Metropolitan and his successor-elect against three Metropolitans ordained by the Patriarch and priests and deacons ordained by defendants 1 to 3 and vicars appointed to the parish churches who are alleged to have joined hands with the other defendants. The Evangelistic Association of the East (18th defendant) and the Malankara Suriyani Knanaya Samudayam (19th defendant) got themselves impleaded subsequently. From our finding on point No.25 it must follow that plaintiffs are not entitled to any reliefs against 18th defendant, and the dismissal of the suit against this defendant must stand. We have held under point No.24 that Knanaya churches and their dioceses and Metropolitan stand on a footing different from that of other parish churches under the Malankara Sabha. On the basis of our other findings it must follow that the Catholicos is the spiritual superior of the Knanaya community and the Knanaya Metropolitans and the latter did function subject to the supervision and spiritual guidance of the former. In regard to the temporal matters, as long as the parties do not harmonise the provisions of the Knanaya Constitution and the Constitution of the Malankara Sabha, the latter can be implemented with reference to the Knanaya dioceses and parishes only subject to the terms of the Knanaya Constitution. The decision in O.S.No.4 of 1979 will be subject to this conclusion." Any decree against 19th defendant must be subject to the above.

164. Plaintiffs seek declaration that Malankara church is episcopal in character and is not a union or federation of autonomous church units and is

governed in its administration by the Constitution of the Malankara church, that defendants 1 to 3 are not competent to ordain priests and deacons, that they are not legally consecrated Metropolitans and defendants 4 to 8 are not legally ordained priests or deacons, that no Metropolitan, priest or deacon unless validly ordained and appointed under the provisions of the Constitution shall officiate, that any priest who refuses to recognise the authority of the first plaintiff and other Metropolitans under him is not entitled to minister. Plaintiffs also seek permanent injunction restraining defendants 1 to 3 from ordaining priests or deacons or performing any other sacraments, services etc. for the church and its institutions, defendants 4 onwards from performing any religious services or sacraments in any of the churches of Malankara or its constituent churches or institutions and restraining the defendants from interfering in any manner with the administration of the Malankara church.

165. We have held that Malankara church is not purely episcopal in character. We have also indicated that it is not a union or federation of autonomous churches and is governed by the Constitution of Malankara Sabha. Defendants 1 to 3 are Metropolitans ordained by the Patriarch. It is not argued before us that their selection or ordination was accepted by the community as represented by the Malankara Association. Therefore they have no legal status as claimed by them. It must necessarily follow that they are incompetent to ordain priests or deacons. Hence status of defendants 4 to 8 as priests and deacons cannot be accepted. Clergy and laity are bound by the provisions of the Constitution of Malankara Sabha. It must follow that decree has to be granted against defendants 1 to 17 as indicated herein and decree in part has to be granted against 19th defendant.

166. O.S.No.5 of 1979 - A.S.No.354/80 and Cross-objection.

This suit relates to St.Mary's Church, Pampady which is a Simhasana church. It was filed by Metropolitan of the Catholicos group of the Kottayam diocese and a priest appointed by him as Vicar of the church against the lay steward and Secretary of the Parish Assembly and other members of the church, seeking declaration that second plaintiff is entitled to function as Vicar without objection from the defendants and that no money of the church can be spent except with the junction and co-operation of the Vicar and only as provided by the Constitution. In view of our finding on point No.23 dismissal of the suit has to be confirmed.

167. O.S.NO.6/79 - A.S.No.362/80 & Cross-objection.

In this suit Catholicos-cum-Malankara Metropolitan and Metropolitan of the Catholicos group of the Malabar diocese seek declaration that Metropolitan of Evangelistic Association and two other Metropolitans of the Patriarch group are not entitled to exercise any function as priest or episcopa or Metropolitan in matters of spiritual,

temporal and ecclesiastical in any parish church or institutions of the Malabar diocese and Malabar church. From our earlier findings it must follow that Metropolitan of the Evangelistic Association cannot be restrained from functioning as such in the churches of the Evangelistic Association but he and the other defendants, being ordained by the Patriarch without acceptance by the community as represented by the Malankara Association cannot have legal status. The suit has to be decreed in this manner.

168. O.S.No.8/79 - A.S. 358/80 & Cross-objection.

This suit filed against the Metropolitan, ordained by the Patriarch has to be decreed since it is not argued before us that he has been accepted by the community as represented by the Malankara Association.

169. The appeals are disposed of as follows:

i) **A.S.No.359 of 1980** -- Decree in O.S.No.1 of 1979 is set aside. The suit is decreed as prayed for, but in the circumstances without costs. The appeal is allowed, but without costs.

ii) **A.S.No.350 of 1980 and Cross-objection** -- Decree in O.S.No.2 of 1979 is confirmed. The appeal is dismissed and the cross-objection is also dismissed, but without costs.

iii) **A.S.No.331 of 1980 and Cross-objections** -- Decree in O.S.No.4 of 1979 is set aside in relation to defendants 1 to 17 and 19. The suit is decreed as prayed for against defendants 1 to 17 but without costs. Dismissal of the suit against 18th defendant is confirmed, but without costs. In so far as 19th defendant is concerned, decree is granted declaring that Catholicos is the spiritual superior of Knanaya community and Knanaya Metropolitan and in regard to temporal matters as long as the parties do not harmonise the provisions of the Knanaya Constitution and the Constitution of the Malankara Sabha, the latter can be implemented with reference to Knanaya diocese and parishes only subject to the terms of the Knanaya Constitution. The appeal is allowed in this manner. Cross-objections are dismissed. Parties will bear costs throughout.

iv) **A.S.No. 354 of 1980 and Cross-objection** -- Decree is confirmed. Appeal and Cross-objection are dismissed, but without costs.

v) **A.S.No.362 of 1980 and Cross-objection** -- Dismissal of the suit O.S.No.6 of 1979 is set aside. Suit is decreed against defendants in relation to parish churches under Malankara church but not in regard to churches of the Evangelistic Association of the East. Appeal is allowed and cross-objection is dismissed but without costs.

vi) **A.S.No. 358 of 1980 and Cross-objection** -- Dismissal of the suit O.S.No.8 of 1979 is set aside. Suit is decreed as prayed and appeal is allowed, but without costs. Cross-objection is dismissed without costs.

1st June, 1990.

Sd/- U.L Bhat, Judge

Sd/- K.P. Balanarayana Marar, J.